89-937

No.

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

KAREN DE KLEINMAN,

Petitioner,

vs.

THE RESIDENTIAL BOARD OF MANAGERS OF THE OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

KAREN DE KLEINMAN
Petitioner, pro se
641 Fifth Avenue
New York, New York 10022
(212) 308-2058

QUESTIONS PRESENTED

I.

Were the Constitutional rights of Petitioner violated when the New York Court of Appeals erroneously refused to afford Petitioner the right to appeal on the ground that the subject order lacked "finality," and additionally, were her rights of "due process" denied, inasmuch as she never was permitted to have at least one review in an Appellate court of the N.Y. Supreme Court's erroneous decision and its dismissal of her counterclaim for undisputed damages?

II.

Were the Constitutional rights of Petitioner violated when she was denied the rights of freedom of speech and expression, when she was barred from discussing, communicating and disseminating information to her fellow condominium unit owners, relating to vital issues concerning the administration, management and operation of the building and the questionable policies of the Board of Managers?

III.

Were the Constitutional rights of Petitioner violated when the Respondents Board of Managers

unjustifiably, capriciously and maliciously refused to issue the routine "waiver of its right of first refusal" on Petitioner's 4th acquired condominium unit in the building? Bearing in mind the long list of continuous denials of Petitioner's First Amendment Rights, visited upon the Petitioner for approximately two years prior to the subject acquisition, were the actions and demands of the Board of Managers retaliatory and "unreasonable" and in fact, acts of discrimination? If so, did not the motives behind the Board's behavior in refusing to

issue the "waiver," and in commencing the litigation against the Petitioner, present controversial issues of fact, which clearly should have precluded the disposition of the case by summary judgment?

IV.

Was there not an "abuse of discretion" by the Appellate Division, First Department and the lower court too, in denying Petitioner the right to appeal when her prior attorneys had failed to advise her of the "nine-month" limitation to perfect an appeal, nor had they mentioned the provision for an

extension or enlargement of time in which to perfect an appeal? Was this not a case where Petitioner should have been excused because of her attorneys' undenied neglect?

V.

Was the Petitioner deprived of "due process" of law when she was unable to financially continue defending her position with counsel, due to acts of God, extenuating circumstances, etc., beyond her control, in the face of the huge battery of respondents' attorneys and the fact that while the respondents

were relying on the deep pockets of the 250 unit condominium treasury, Petitioner was solely liable for her substantial legal expenses?

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NO. _____

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PETITION FOR A WRIT OF CERTIORARI

TO THE NEW YORK COURT OF APPEALS

TO THE HONORABLE CHIEF AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

KAREN de KLEINMAN, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York, entered in the above titled case, on September 14, 1989.

I. OPINIONS BELOW

The decisions of the New York Court of Appeals dated July 6, 1989 and September 14, 1989 (reargument) are cited in the New York State Reporter at Vol. 74 N.Y. 2d 759, 843, respectively and are found in Appendix A, pages 1 (reargument) and 7.

The New York Court of Appeals Notice of Motion to Reargue, dated August 4, 1989, is found in Appendix A, page 3.

The New York Court of Appeals Notice of Motion to Appeal, dated April 3, 1989, is found in Appendix A, page 9.

The decision of the Supreme Court, Appellate Division, First Department, dated February 28, 1989, is found in Appendix A, page 12.

The New York Supreme Court Appellate Division, (1st Dept.), Notice of Motion for Extension and Enlargement of Time, dated January 11, 1989 is found in Appendix A, page 15.

The opinion, judgment and order of Justice Elliott Wilk of the Supreme Court: County of New York, Index #8147/86, entered on November 12, 1987, is additionally found in Appendix A, pages 18 (opinion) and 26 (judgment and order).

The New York Supreme Court Notice of Appeal, dated December 7, 1987 is found in Appendix A, page 34.

II. JURISDICTION

The judgment of the Court of Appeals of the State of New York, the highest court in New York, was entered on July 6, 1989. A timely motion for reargument was denied on September 14, 1989 and is found in Appendix A, page 3. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. Section 1257.

28 USC Section 1257

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in

question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution treaties or laws of the United States or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment 5

No person shall be held to answer for a capital or other infamous crime unless on a presentment or

indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall

make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

IV. STATEMENT OF THE CASE

The Petitioner, a Brandeis University graduate and licensed real estate broker in the State of New York, specializing in the sales and leasing of N.Y.'s finest co-ops and condominiums for the past 17 years, appearing pro se, respectfully submits the within Petition in support of her application for a Writ of Certiorari issue to the New York Court of Appeals to permit an extension and enlargement of Petitioner's time to file and perfect her Appeal from the Order and judgment, dated November 12, 1987, made by Mr. Justice Wilk in the Supreme Court, New York County and appealed to the Appellate Division of the New York Supreme Court, 1st Department. The subject application is

from the order of the New York Court of Appeals dated September 14, 1989, denying on reargument Petitioner's request for an extension and enlargement of time to file and perfect her appeal, previously denied by the Appellate Division, from the prior order and judgment heretofore made by Mr. Justice Wilk in the Supreme Court, New York County, (Index #8147/86), on the ground that the subject order was not a "final order."

In arriving at its decision denying Petitioner's application, the lower court overlooked several vital and cogent propositions of law and undenied facts, which should form the basis for a review of the aforesaid order made by the lower court in denying Petitioner's application for leave to appeal to the Apppellate Division. Petitioner respect-

fully submits that her Reply Affidavit, previously interposed in the lower court in support of her request for leave to appeal therein, to a great extent, reflects many principles of law and undisputed factual material, overlooked by that court. (Petitioner annexes hereto and makes a part hereof, a copy of her Reply Affidavit found in Appendix B, pages 1-20. That document and the exhibits contained therein are a rather complete description of the background and events leading to the present controversy.

While Petitioner does not desire to burden this Court with a repetition of those arguments previously discussed in her moving papers, Petitioner does desire to call the Court's attention to several relevant

and meritorious points of law, as well as decisive factual material, which entitled her to at least one review of the unfair and erroneous decision made by Judge Wilk in the N.Y. Supreme Court, New York County, Index #8147/86.

Essentially, this case involves controversies which are most prevalent today, in connection with the rather recently developed concept of condominium ownership of apartments. Newspapers, magazines, professional journals, etc., reflect in their columns, a growing and controversial struggle, friction and abuse between governing boards in their fiduciary capacities and the condominium unit owners they serve. These problems affect the lives of almost all communities throughout the country.

Unresolved issues concerning the rights and obligations of unit owners and their respective boards of managers, create daily tension, arguments, confusion, frustration, ill-feeling and eventually permanent divisions amongst neighbors, friends and fellow unit owners. Due to the lack of any definitive legislative code or basic body of laws governing condominium issues, there is a prevalence of chaos, misunderstanding, disrespect and abuses of normal mores and of the law in our community. The issues and problems related thereto affect a wide cross-section of our citizens throughout the country, especially in urban areas. A review of these public problems by this Court is essential to establishing a final determination of the conflicting issues involved therein.

The subject case is no exception. As indicated in Petitioner's previous papers, she has struggled through great difficulty and hardships, emotional stress and strain, in addition to an enormous loss and expenditure of money, simply in her efforts to obtain fair play and justice. The within controversy can be summed up in one sentence. A seller (AI International Corp.) requested the Board of Managers to issue a routine document, i.e., "the waiver of its right of first refusal to purchase the subject unit" and in this instance, wherein Petitioner was the prospective purchaser, the request was capriciously, maliciously and "unreasonably" denied. Significantly, Petitioner owned at that time, three other units in the same condominium building, all of which were in good standing. Neverthe-

less, in retaliation of her bona fide attempts to organize fellow condominium unit owners in the building to enforce and protect their rights, to exercise the right to free assembly and to express grievances, in an attempt to improve the living and administrative conditions in the building, to enforce their rights to petition the board for the purpose of calling a special meeting, to alert public officials to dangerous and reckless violations of law which endangered the lives and property of all building residents (for years) etc., the Board of Managers repeatedly, over a 5-month period (July-November, 1987), refused to issue this routine "waiver," never before denied in the history of the building's existence. The motives for the Board's punitive and

discriminatory actions were purely retaliatory against Petitioner, based solely on her attempted exercise of her Constitutional rights and the challenge she mounted against the abuses of the self-perpetuated members of the Board.

Clearly, the unlawful procedures of the Board, denied Petitioner of many of her basic and fundamental Constitutional rights, i.e., the rights of free speech, assembly and to petition to redress grievances, etc., protected under the First Amendment and additionally, her rights of "due process" and "equal protection" with regard to the deprivation of property ownership protected under the Fifth Amendment of the U.S. Constitution, made applicable to the states, through the Fourteenth Amendment.

While many courts in our states have recognized and enforced these basic rights, obviously in this case, the lower courts have failed to protect Petitioner's Constitutional rights. It is therefore respectfully submitted that these Constitutional rights involve fundamental principles of law and society and are also of great public interest, affecting a substantial number of the citizens in our country.

There were contained in both the Supreme Court and Appellate Division papers, lengthy discussions of the "blatant" violations of the private personal rights of the Petitioner, discrimination and retaliation by the Respondents because of her assertion of the privileges and rights of free speech, equal protection of the law,

etc. In the Court of Appeals, the Petitioner vigorously asserted specifically her Constitutional rights of free speech, assembly, right to counsel, denial of "due process", etc. Petitioner has listed at least 10 Constitutional violations of her 1st, 5th and 14th Amendment rights in her reargument papers, in the court below, on pages 4, 5, 6 and 7 of her moving affidavit.

Judge Wilk's decision failed to consider these numerous abuses and deprivation of Petitioner's Constitutional rights; indeed, he makes no mention of them whatsoever! As a matter of law, his decision constituted an alleged judicial enforcement of private discrimination, strictly prohibited

under the Fourteenth Amendment of the U.S. Constitution.

The lower courts followed suit and completely ignored Petitioner's request of fairness and enforcement of her Constitutional rights.

V. REASONS FOR GRANTING THE WRIT

A.

THE DENIAL BY THE LOWER COURT OF PETITIONER'S APPLICATION FOR LEAVE TO APPEAL WAS A FINAL ORDER ENTITLING HER TO A REVIEW OF HER CASE

The record will show that the Petitioner never received an Appellate Review of the Supreme Court, County of New York decision, **voiding Petitioner's deed**, reflecting the purchase of Unit 26-A in the Olympic Tower Condominium (her fourth acquisition in the building) and **additionally dismissing her counterclaim** against the Respondents, in the amount of $5,000,000 for damages for intentional retaliation and discrimination.

Petitioner has been denied the right to appeal solely because her previous incompetent attorneys failed to advise her of the "nine-month" limitation rule to perfect an appeal in the Appellate Division, nor did they ever advise her of the provision for the extension and enlargement of time in which to perfect her appeal, despite the fact that they were adequately compensated for their services. In Michel et al., vs. City of Troy, et al., 109 N.Y.S. 2d 299, 279 App. Div. 837, the prevailing rule regarding such attorneys' failures was stated as follows:

> "It is the policy of the Court to relieve a party for inadvertence of counsel unless prejudice to the other side is shown."

No such prejudice was ever shown. Likewise in Jensen vs. Backman, et al., 283 N.Y.S. 862, 246 A.D. (1st Dept.) 741, the Court said:

> "Inadvertence of defendant's counsel held not, under the circumstances, chargeable against defendant, so as to preclude defendant from having default judgment vacated."

Petitioner has therefore been denied counsel and adequate representation, similar to a situation where Petitioner's attorney had died, and therefore Petitioner was abandoned and completely in the dark, as to her rights to perfect the subject appeal and/or enlargement of time.

Obviously, the Petitioner is not responsible for the negligence, inadvertence and errors made by her prior attorneys in handling the initial appeal to the Appellate Division of the State of New York.

It is clear that the manner in which the present situation stands, the subject action is ended, terminated and final. It could not be more final than it is now. Yet, despite the fact that the Petitioner never had the opportunity to have any court review of the Special Term's judgment, the lower court erroneously ruled that the within determination is not final. This was a clear violation of "due process" and fundamentally unfair. See, U.S. v. American Honda Motor Co., 271 F. Supp. 979.

The subject New York State Court of Appeals' procedural order rendered against Petitioner is actually a final determination of Petitioner's Constitutional rights. In Harrison vs. Missouri Pacific Railroad, 37 U.S. 248, 9 L.Ed.2d 711, 83 S.Ct. 690, this Court held:

> "a judgment became final when the Illinois Supreme Court denied Plaintiff leave to appeal."

Moreover, the subject order from which Petitioner is appealing, became final when the New York Court of Appeals denied leave to appeal and/or reargue. In summarizing the definition of a final order, Corpus Juris Secundum states in Volume 4, page 257, as follows:

"In the absence of a statutory definition, a final judgment, order or decree has been held to be, or defined as, one that finally disposes of, adjudicates, or determines the rights, or some right or rights, of the parties, either in the entire controversy or on some definite and separate branch thereof, and which concludes them until it is reversed or set aside; one which disposes of the cause, or a distinct branch thereof reserving no further question, decision, or direction for future determination; or one which determines the rights involved or which denies appellant the means of further

> prosecuting or defending his rights and interest in the subject matter of the proceeding."

Again in Stanford vs. State of Texas, 379 U.S. 476, 13 L. Ed. 2d 431, 85 S. Ct. 506, reh den 380 U.S. 926, 13 L.Ed. 2d 813, 85 S.Ct. 879, this Court in holding that denial by a Texas county judge who had issued a search warrant, on a motion made by an owner for the return of the property seized under the warrant and for an annulment of the warrant, is reviewable by the United States Supreme Court on certiorari "where the order of denial is final and not appealable or otherwise reviewable under the law." The same principle prevails at bar, since the subject order under review herein is final and not appealable pursuant to state law.

Here, it has been shown that the insensitive, unfair and unjust determination precluding the Petitioner from obtaining the opportunity to permit a review of the within determination in the Appellate Division can only be rectified by this Court solely in the interests of justice. Clearly, Petitioner never had her Appellate day in court. The denial of petitioner's "due process" right was violative of the Fifth and Fourteenth Amendments. See, Gibbany v. State of Oklahoma, 415 F.Supp. 1117.

It should not be overlooked that the within judgment was obtained as a result of a summary application -- there never was a trial herein -- despite the fact that there were crystal clear abuses of Petitioner's Constitutional rights.

Above all, it is evident that the handful of members of the Board have retaliated against the Petitioner for her attempt to invoke her Constitutional rights of freedom of expression, etc., and continuing with a long list of abuses and breaches by the respondents of their fiduciary obligations towards a fellow unit owner, they unjustifiably, maliciously and capriciously refused to issue the routine "waiver of the right of first refusal," never before refused to any purchaser, in any transaction, by the Board. The New York Appellate courts have held that there is certainly a minimum standard of behavior due to a purchaser of a second apartment in a building, by an owner in good standing, let alone one purchasing her fourth (in good standing). The Board's outrageous actions should shock the conscience of

this Court. SEE, Bernheim v. 136 E. 64th Street Corporation, 128 A.D. 2d 434, 512 N.Y.S. 2d 825; Boisson v. 4 East Housing Corp, 514 N.Y.S.2d 374. It is therefore respectfully submitted that this case cries for a review by the lower court, otherwise "due process, "equal protection" and Petitioner's Constitutional rights will have no meaning.

Ironically, it is now accepted as standard practice by the Courts of New York -- **especially the Appellate Division of the Supreme Court of the State of New York (1st Dept.), the same court that denied Petitioner her right to appeal**, that a Board of Managers must act **reasonably** in permitting an existing owner of an apartment to purchase another apartment. SEE, Bernheim, supra; Boisson, supra.

It is therefore respectfully submitted that the lower Court's denial of Petitioner's right to appeal was an obvious "final" order and a violation of the "due process" provisions of the U.S. Constitution.

V. REASONS FOR GRANTING THE WRIT

B.

IN INHIBITING THE PETITIONER FROM CIRCULATING HER VIEWS ON THE ISSUES BEFORE THE CONDOMINIUM UNIT OWNERS IN THE SUBJECT OLYMPIC TOWER, THE RESPONDENTS VIOLATED PETITIONER'S FIRST AMENDMENT RIGHTS.

It is undisputed that the Respondents prohibited the Petitioner from disseminating, amongst her fellow condominium unit owners, her views relating to the administration, operation and management of the subject premises, consisting of 250 unit owners. Clearly, then, this is a direct violation of Petitioner's First Amendment rights.

In Virginia State Board of Pharmacy et al., v. Virginia Citizens Consumer Council, Inc., et al., 425 U.S. 748, 48 L. Ed 2d 346, 96 S. Ct. 1817, "A Virginia resident who was required to take prescription drugs on a daily basis and two nonprofit organizations, many of whose members were users of prescription drugs, brought an action in the United States District Court for the Eastern District of Virginia to challenge, on First and Fourteenth Amendment grounds, that part of a Virginia statute making it unprofessional conduct for a pharmacist licensed in Virginia to advertise any price for any drugs which may be dispensed only by prescription. Finding that the statute violated consumers' rights under the First Amendment and that the statute had not been adequately justified, the

three-judge District Court declared the challenged portion of the statute void and enjoined the defendants, the Virginia State Board of Pharmacy and its individual members, from enforcing it (373 F Supp 683).

On direct appeal this Court affirmed. In an opinion by BLACKMUN, J., expressing the view of seven members of the court, it was held that (1) any First Amendment protection attaching to the flow of drug price information was a protection enjoyed not solely by the advertisers themselves who sought to disseminate that information, but also was a protection enjoyed by the plaintiffs as the recipients of such information, which protection the plaintiffs could assert in the action, (2) since commercial speech was protected under the First Amendment, the

advertisement of prescription drug prices was protected under the First Amendment notwithstanding its commercial speech character, and (3) justification for the statute's advertising ban as maintaining a high degree of professionalism on the part of licensed pharmacists was insufficient."

Again in The People of the State of New York vs. Ronald Remeny, 40 N.Y. 2d 527, 387 N.Y.S. 2d 415, 355 N.E.2d 375, the question before the court was the constitutionality of a municipal ordinance prohibiting the distribution of leaflets or handbills in all public places at all times and under all circumstances. In holding that the ordinance was unconstitutional and violative of the 1st Amendment, the Court stated the principle:

"Neither the Federal Constitution nor our State Constitution specifies that one kind of speech is to be preferred over another. In my view, it is not, therefore, for us to decide whether commercial speech is less important than speech which is more overtly political or social in nature. That determination is itself a matter of individual freedom. To one citizen, the most important subject on which to communicate may be politics, constitutional rights, or the administration of justice; to another it may be what merchandise is available in the market at what price.

Indeed, as a practical matter, most communications may have a thread of both the commercial and the noncommercial running through them."

"Does a consumer's concern with the rising price of electricity lose its commercial character when he campaigns for the election of a legislator who espouses sterner utility regulation? Is one citizen's desire to lobby for tax reforms to his own financial benefit somehow less economic in nature than another's interest in obtaining goods at the lowest price? I think not." (emphasis added)

Judge Fuchsberg further stated:

> "Pamphlets, leaflets and brochures have traditionally played an important role in the distribution of ideas and information in our Nation. More often than not, they have been the only means open to persons who are without access to more widespread forms of communication. The right to their use is no less important today than it has been in the past."

In the leading case of The New York Times Company vs. L. B. Sullivan, 376 U.S. 254, the question before the Court was whether a public official could sue a newspaper which had published an

editorial expressing its critical opinion of the state's lack of safeguards in behalf of the Black right-to-vote movement. In reversing a judgment in favor of the Petitioner in the sum of $500,000 and remanding the case to the lower court for further proceeding, this Court stated the rule:

> "The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Roth v. United States, 354 U.S. 476, 484, 77

S.Ct. 1304, 1308, 1 L. Ed. 2d 1498. "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." Stromberg v. California, 283 U.S. 359, 369, 51 S.Ct. 532, 536, 75 L. Ed. 1117. "[I]t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions." Bridges v. California, 314 U.S. 252, 270,

62 S. Ct. 190, 197, 86 L. Ed. 192, and this opportunity is to be afforded for 'vigorous advocacy' no less than 'abstract discussion.'" N.A.A.C.P. v. Button, 371 U.S. 415, 429, 83 S.Ct. 328, 9 L. Ed. 2d 405."

SEE also: Gall v. Lawyer, 322 F. Supp. 1223; Ware v. M. L. Nichols, 266 F. Supp. 564; Gibson v. The Florida Bar and Members of the Board of Governors, 798 F.2d 1564; Rasche v. Board of Trustees of University of Illinois, 353 F. Supp. 973; Taxation with Representation of Wash. v. Regan, 676 F.2d 715; United States of America v. Criden et al., 675 F.2d 550; Brandenburg v. State of Ohio, 395 U.S. 444, 23 L. Ed. 2d 430, 89 S.Ct. 1827; Auer v. Dressel, 306 N.Y. 427, 431, 118 N.E. 2d 590, 591.

In Auer v. Dressel, supra, the Court of Appeals in affirming an order requiring a corporate president to call a special meeting when petitioned to do so by written request, signed in names of holders of record of slightly more than 55 percent of preferred stock, stated the rule:

> "The important right of stockholders to have such meetings called will be of little practical value if corporate management can ignore the requests, force the stockholders to commence legal proceedings, and then, by purely formal denials, put the stockholders to lengthy and expensive litigation, to establish facts as to stockholdings which are

peculiarly within the knowledge of the corporate officers."

It is therefore respectfully submitted that as discussed by the above authorities, the Petitioner's Constitutional rights to disseminate her ideas on corporate management's policies and related matters, before her fellow condominium unit owners for discussion and voting, were blatantly violated by the Respondents.

SEE also, Blue Bird Coach Lines, Inc., vs. City of Niagara Falls et al., 53 N.Y. 2d 731, 421 N.E.2d 828; The People of the State of New York vs. Ferber, 439 N.Y.S.2d 863, 52 N.Y.2d 674; Central Hudson Gas & Electric Corporation vs.

Public Service Commission of New York, 447 U.S. 557, 65 L. Ed. 2d 341, 100 S. Ct. 2343.

VI. CONCLUSION

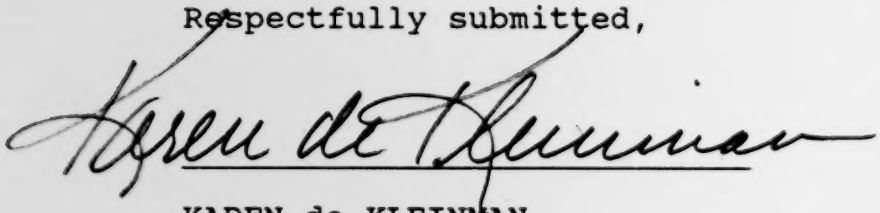
The order made by the Court of Appeals on September 14, 1989, holding that there was no "finality" to the application under review herein was clearly an erroneous abuse of discretion and a denial of Petitioner's rights of "due process." Factually, by denying her the right to appeal, the lower court has actually terminated the within action and created the "finality" of the subject order.

This case presents a fundamental challenge to the Judicial System wherein until now a capricious, malicious, irresponsible and power-hungry condominium Board of Managers in the State of New York, has unreasonably ridden

"rough-shod" over the Constitutional and property rights of dissenting fellow condominium unit owners and simultaneously discriminated against the Petitioner in violation of her undenied Constitutional rights.

Petitioner respectfully prays that a Writ of Certiorari be granted.

Respectfully submitted,



KAREN de KLEINMAN
Petitioner, pro se
641 Fifth Avenue
New York, New York 10022
(212) 308-2058

Dated: December 11, 1989
New York, New York

APPENDIX A

APPENDIX A

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STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the fourteenth day of September A.D. 1989

PRESENT, HON. SOL WACHTLER, Chief Judge, presiding.

Mo. No. 1025
The Residential Board of Managers of Olympic Tower Condominium,
Respondent,
v.
AI International Corp.,
Defendant,
and Karen de Kleinman,
Appellant,

(and another proceeding)

A motion for reargument of motion for leave to appeal to the Court of Appeals in the above causes having been heretofore made upon the part of the appellant herein and papers having

been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Donald M. Sheraw
Clerk of the Court

(Court of Appeals Seal
is affixed thereon)

COURT OF APPEALS OF
THE STATE OF NEW YORK
- - - - - - - - - - - - - x

THE RESIDENTIAL BOARD :
OF MANAGERS OF
OLYMPIC TOWER :
CONDOMINIUM,
:

Plaintiff-Respondent,
:

INDEX #8147/86

-against- :

AI INTERNATIONAL CORP. NOTICE OF MOTION

Defendant, :

-and- :

KAREN de KLEINMAN, :

Defendant-Appellant. :

- - - - - - - - - - - - - x

- - - - - - - - - - - - -:
KAREN de KLEINMAN, :

Counterclaim :
Defendant-Appellant,
:
-against-
:

THE RESIDENTIAL BOARD :
OF OLYMPIC TOWER
CONDOMINIUM, DONALD :
KREINDLER, T. VINCENT
LEARSON,JOHN L. GRANT, :
DOROTHY CRAIG AND
IRVING LEVITT, :

:
Counter-Claim
Defendants-Respondents :

PLEASE TAKE NOTICE that upon the annexed Affidavit of Karen de Kleinman, sworn to this 4th day of August, 1989, the undersigned will move this Court, at a Stated Term for Motions to be held at the Court House at the Court of Appeals Hall, Albany, New York, on the 21st day of August, 1989, at

10:00 a.m. in the forenoon, or as soon thereafter as counsel can be heard, for an Order permitting the reargument of her previous motion for leave to appeal to the within Court, from the Order made by the lower court denying Appellant's application to enlarge her time to perfect the subject appeal from the Order made by Mr. Justice Wilk, dated November 12, 1987, in the Supreme Court, New York County, granting Plaintiff's application for summary judgment, and upon such reargument, granting Appellant's application to enlarge her time to perfect the subject appeal, on the ground that the Court overlooked certain controlling principles of law and undisputed facts in arriving at its decision, and for such other and further relief as may be deemed proper in the premises.

Dated: August 4, 1989

New York, New York

Yours, etc.,

KAREN de KLEINMAN
Defendant-Appellant, pro se
641 Fifth Avenue
New York, NY 10022

(212) 308-2058

TO: Kurzman Karelsen & Frank
Attorneys for Plaintiff-Respondent
230 Park Avenue
New York, NY 10169

(212) 867-9500

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the sixth day of July A.D. 1989

PRESENT, HON. SOL WACHTLER, Chief Judge, presiding.

2-11 Mo. No. 509
The Residential Board of Managers of Olympic Tower Condominium,
Respondent,
v.
AI International Corp.,
Defendant,
and Karen de Kleinman,
Appellant,
v.
The Residential Board of Managers of Olympic Tower Condominium, et al.,
Respondents.

A motion for leave to appeal to the Court of Appeals in the above causes having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due

deliberation having been thereupon had, it is

ORDERED, that the said motion, insofar as it seeks leave to appeal from so much of the Appellate Division order as denied the motion for enlargement of the time within which to perfect the appeal, be and the same hereby is dismissed upon the ground that that portion of the order sought to be appealed from does not finally determine the action within the meaning of the Constitution; and it is

ORDERED, that the said motion for leave to appeal otherwise be and the same hereby is denied.

Donald M. Sheraw
Clerk of the Court

COURT OF APPEALS OF THE STATE OF NEW YORK

----------x

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,

Plaintiff-Respondent,

-against-

AI INTERNATIONAL CORP.,

Defendant,

-and-

KAREN de KLEINMAN,

Defendant-Appellant.

NOTICE OF MOTION

Index No. 8147/86

----------x

KAREN de KLEINMAN,

Defendant-Appellant,

-against-

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG AND IRVING LEVITT,

Counter-Claim Defendants-Respondents.

----------x

SIRS:

PLEASE TAKE NOTICE that upon the annexed Affidavit of Karen de Kleinman, sworn to me this 3rd day of April 1989, the undersigned will move this Court for an Order permitting the Defendant-Appellant to extend and enlarge her time to file and perfect her Appeal from the Order and Judgment made by Mr. Justice Elliott Wilk, in the Supreme Court of the State of New York, County of New York, dated November 12, 1987, to the Appellate Division of the Supreme Court State of New York, First Judicial Department and for such other and different relief as may be deemed just and proper in the premises, on April 24, 1989, at the Court of Appeals Hall, Albany, New York 12207, at 9:30 A.M.

Dated: New York, New York
April 3, 1989

Yours, etc.

KAREN de KLEINMAN
Defendant-Appeallant,

pro se
641 Fifth Avenue
New York, NY 10022
(212) 308-2058

TO: KURZMAN KARELSEN
& FRANK
Attorneys for Plaintiff-
Respondent and Counter-
Claim Defendants-
Respondents
230 Park Avenue
New York, NY 10169
(212) 867-9500

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on February 28, 1989

Present - Hon.

Theodore R. Kupferman Justice Presiding
Bentley Kassal
Ernst H. Rosenberger
Richard W. Wallach
George Bundy Smith Justices

The Residential Board of Managers of Olympic Tower Condominium,

Plaintiff-Respondent,

against

AI International Corp., M-192

Defendant,

and M-341

Karen de Kleinman,

Defendant-Appellant.

----------x

Karen de Kleinman, :

Counterclaim
Plaintiff-Appellant, :

against

:

The Residential Board of Managers
of Olympic Tower Condominium,
Donald Kreindler, T. Vincent :
Learson, John L. Grant, Dorothy
Craig and Irving Levitt,

:

Counterclaim
Defendants-Respondents.

----------x

Defendant-appellant/counterclaim plaintiff-appellant having moved this Court for an order enlarging the time in which to perfect her appeal from an order and judgment (one paper) of the Supreme Court, New York County, entered on or about November 12, 1987,

And plaintiff-respondent/counterclaim defendants-respondents having cross-moved to dismiss the appeal,

Now, upon reading and filing the papers with respect to the motion and cross-motion, and due deliberation having been had thereon,

It is ordered that the motion for an enlargement be and hereby is denied, and the cross-motion to dismiss the appeal is granted.

ENTER:

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - FIRST DEPARTMENT
----------x

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,

Plaintiff-Respondent,

-against-

AI INTERNATIONAL CORP.,

Defendant,

-and-

KAREN de KLEINMAN,

Defendant-Appellant.

NOTICE OF MOTION

Index No. 8147/86

----------x

KAREN de KLEINMAN,

Defendant-Appellant,

-against-

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG AND IRVING LEVITT,

Counter-Claim Defendants-Respondents.

----------x

SIRS:

PLEASE TAKE NOTICE that upon the annexed Affidavit of Karen de Kleinman, sworn to me this 11th day of January 1989, the undersigned will move this Court for an Order extending and enlarging the time to perfect her Appeal fom the Order and Judgment of Justice Elliott Wilk, dated November 12, 1987, on January 23, 1989 at the courthouse, 27 Madison Avenue, New York, New York 10010, at 10:00 in the forenoon of that day.

Dated: New York, New York
January 11, 1989

Yours, etc.

KAREN de KLEINMAN
Defendant-Appeallant,
pro se
641 Fifth Avenue
New York, NY 10022
(212) 308-2058

TO: KURZMAN KARELSEN
& FRANK
Attorneys for Plaintiff-
Respondent and Counter-
Claim Defendants-
Respondents
230 Park Avenue
New York, NY 10169
(212) 867-9500

SUPREME COURT : NEW YORK COUNTY SU5
INDIVIDUAL ASSIGNMENT PART 6
----------x

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,

Plaintiff, Index No.

-against-

8147/86

AI INTERNATIONAL CORP., and KAREN de KLEINMAN,

Defendants.

----------x

KAREN de KLEINMAN,

Counter-Claim Plaintiff,

-against-

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG AND IRVING LEVITT,

Counter-Claim Defendants.

----------x

ELLIOTT WILK, J.[1]:

---

[1] I acknowledge the assistance of Tina Minauskas in the drafting of this opinion.

Karen de Kleinman is the owner of four residential units in Olympic Tower, a condominium located at 641 Fifth Avenue, New York City. She is a real estate broker who has represented sellers and purchasers of units within Olympic Towers.

On June 24, 1985, Ms. de Kleinman contracted with A.I. International Corp. to purchase unit 26-A. At the time, Ms. de Kleinman owned three other units at Olympic Towers.

Article VIII of the Condominium's by-laws establishes the procedures to be followed for the sale of a unit and provides that the Board may elect to purchase the unit on behalf of all unit owners upon the same terms and conditions contained in the outside offer.

Section 1 of Article VIII

requires any residential unit owner who receives an offer to purchase his or her unit to notify the Board of the terms of the proposed sale, and to provide the Board with such further information as it may reasonably request. Within twenty days of receiving this information, the Board may elect to exercise its right of first refusal. Any sale of a unit in violation of Article VIII, Section 1 is voidable at the election of the Board.

On June 27, 1985, A.I. International's attorneys requested that Douglas Elliman, the managing agent, secure the Condominium's waiver of its right of first refusal.

On July 9, 1985, the managing agent requested certain information of A.I. International, including a "[c]urrent [f]inancial [s]tatement from the proposed purchaser." The response

was a letter of July 15, 1985 from Ms. de Kleinman's accountant advising that it is their policy not to release financial statements of clients.

On July 23, 1985, the Board requested a financial statement of Ms. de Kleinman's assets, liabilities and income.

On July 26, 1985, Ms. de Kleinman's counsel informed the Board that he had advised his client not to comply with the request for financial disclosure.

By letter of August 5, 1985, Ms. de Kleinman was advised that the Board could not act upon the proposed sale of Unit 26-A until it received the requested information.

By letter dated November 18, 1985, A.I. International provided the Board with Ms. de Kleinman's TRW credit report. By letter dated November 22,

1985, the Board informed A.I. International that the TRW credit report did not satisfy its request for a current financial statement.

On November 27, 1985, the unit was sold to Ms. de Kleinman. On December 11, 1985, the Board voted to void the sale. Thereafter, the Board brought this action to declare the sale void. Ms. de Kleinman counterclaimed for damages flowing from the Board's refusal to waive its right of first refusal.

Plaintiff moves for summary judgment; for an order dismissing the affirmative defenses; and for an order dismissing the counterclaims asserted by Ms. de Kleinman. Defendants cross-move for summary judgment.

Defendants' position that the Board's request for Ms. de Kleinman's current financial statement was

unreasonable is without merit. Article VIII of the by-laws clearly entitles the Board to request and be provided with a prospective purchaser's financial statement to enable it to intelligently determine whether to exercise its right of first refusal.

Nothing in the papers supports defendants' contention that the Board waived its right of first refusal. The documentary evidence provided shows nothing other than the Board's requests for a financial statement and defendants' refusals to provide one. Accordingly, the time period in which the Board must exercise or waive its right of first refusal never began to run.

Defendants' argument that the right of first refusal violates the New York rule against perpetuities also lacks merit. The rule against

perpetuities prohibits the suspension of the power of alienation "for a longer period than lives in being at the creation of the estates and a term of not more than twenty-one years." EPTL §9-1.1(a)(2). The "power of alienation is suspended when there are no persons in being by whom an absolute fee or estate in possession can be conveyed or transferred." EPTL §9-9.1(a)(1). The right of first refusal merely grants to the Board a right to purchase the unit on the same terms and conditions offered to the unit owner. It is a preemptive right to which the rule against remote vesting should not apply. See Metropolitan Transportation Authority v. Bruken Realty Corporation, 67 NY2d 156, 164-65 (1986).

Because the Board acted within its authority in refusing to waive its right of first refusal, the

counterclaims flowing from this refusal must be dismissed.

Accordingly, plaintiffs' motion is granted in its entirety.

Settle order.

DATED: September 15, 1987

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,

Plaintiff,

-against-

AI INTERNATIONAL CORP., and KAREN de KLEINMAN,

Defendants.

NOTICE OF ENTRY

Index No. 8147/86

---x

KAREN de KLEINMAN,

Counter-Claim Plaintiff,

-against-

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG AND IRVING LEVITT,

Counter-Claim Defendants.

---x

S I R S:

PLEASE TAKE NOTICE that the within is a true copy of an order and judgment duly entered in the office of the Clerk

of the County of New York on November 12, 1987.

Dated: New York, New York
November 30, 1987

Yours, etc.

KURZMAN KARELSEN & FRANK
Attorneys for Plaintiff and
Counter-Claim Defendants
230 Park Avenue
New York, New York 10169
(212) 867-9500

TO: MILBANK TWEED HADLEY & McCLOY
Attorneys for Defendant AI
International Corp.
One Chase Manhattan Plaza
New York, New York 10005

CERTILMAN HAFT BALIN BUCKLEY KREMER
& HYMAN
Attorneys for Defendant and
Counter-claim Plaintiff Karen
de Kleinman
805 Third Avenue
New York, New York 10022

Supreme Court of the State of New York, held in and for the County of New York at the Courthouse, 60 Centre Street, New York, New York on the 12th day of November, 1987.

P R E S E N T:

HON. ELLIOTT WILK

JUSTICE

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,	:	
Plaintiff,	:	ORDER AND JUDGMENT
-against-	:	
AI INTERNATIONAL CORP., and KAREN de KLEINMAN,	:	Index No. 8147/86
Defendants.	:	
KAREN de KLEINMAN,	:	
Counter-Claim Plaintiff,	:	
-against-	:	
THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG AND IRVING LEVITT,	:	
Counter-Claim Defendants.	:	

Plaintiff and the counter-claim defendants having moved for summary

judgment on the complaint, for dismissal of the affirmative defenses raised by defendants and for dismissal of the counterclaims asserted by defendant Karen de Kleinman; and summary judgment dismissing the complaint;

NOW, upon reading and filing the Notice of Motion dated April 10, 1986, and the Affidavit of T. Vincent Learson, sworn to on April 10, 1986, together with the exhibits annexed thereto, in support of the motion of plaintiff and the counter-claim defendants the Notice of Cross-Motion dated May 2, 1986, and the Affidavit of Karen de Kleinman, sworn to on May 2, 1986, together with the exhibits annexed thereto, in support of the cross-motion of defendant Karen de Kleinman and in opposition to the motion of plaintiffs and the counter-claim defendants; the Notice of Cross-Motion dated May 7, 1986

and the Affidavit of Fran Rosasco, sworn to on May 7, 1987, together with the exhibit annexed thereto, in support of the cross-motion of defendant AI International Corp.; the affidavit of Donald L. Kreindler sworn to on May 28, 1986, together with the exhibits annexed thereto, in opposition to the defendants' cross-motions and in further support of the motion of plaintiff and the counter-claim defendants; the Supplemental Affidavit of Karen de Kleinman, sworn to on June 3, 1986, in further opposition to the motion of plaintiff and the counter-claim defendants and in further support of the cross-motion of defendant Karen de Kleinman; the Supplemental Affirmation of Stanley E. Margolies, Esq., dated June 10, 1986 in response to the aforesaid Supplemental Affidavit; and the Supplemental Affirmation of Martin

Stein, Esq., dated June 11, 1986, in reply thereto; and the matter having come to be heard by this Court, and Kurzman Karelsen & Frank having appeared for plaintiff and the counter-claim defendants, and Milbank, Tweed, Hadley & McCloy having appeared for defendant AI International Corp., and Phillips, Nizer, Benjamin, Krim & Ballon having appeared for defendant and counter-claim plaintiff, Karen de Kleinman; and due deliberation having been had thereon; and this Court having rendered a memorandum decision dated September 15, 1987;

NOW, on motion of Certilman Haft Balin Buckley Kremer & Hyman, attorneys for defendant Karen de Kleinman and the counter-claim plaintiff, it is

ORDERED that plaintiff's motion for summary judgment dismissing the

affirmative defenses and for the relief sought in the complaint is granted; and it is further

ADJUDGED AND DECLARED THAT:

(a) the sale of Unit 26A at Olympic Tower Condominium from defendant AI International Corp. to defendant Karen de Kleinman is void;

(b) the deed dated November 27, 1985 is void; and

(c) defendant Karen de Kleinman has no right to occupy or exercise rights of ownership over Unit 26A at Olympic Tower Condominium nor does she have or has she ever had any obligation to pay common charges with respect to that unit; and it is further

ORDERED AND ADJUDGED that the motion of the counter-claim defendants for summary judgment dismissing the Counterclaims is granted and it is further

ORDERED that the defendants' cross-motions for summary judgment are denied in their entirety;

_____

J. S. C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
----------x

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,

Plaintiff,

-against-

AI INTERNATIONAL CORP., and KAREN de KLEINMAN,

Defendants.

NOTICE OF APPEAL

Index No. 8147/86

----------x

KAREN de KLEINMAN,

Counter-Claim Plaintiff,

-against-

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG AND IRVING LEVITT,

Counter-Claim Defendants.

----------x

SIRS:

PLEASE TAKE NOTICE that defendant and counter-claim plaintiff

KAREN de KLEINMAN hereby appeals to the Appellate Division, First Department from the order and judgment entered by Justice Elliott Wilk in the Supreme Court of the State of New York, New York County on November 12, 1987, and from each and every part thereof.

Dated: New York, New York
December 7, 1987

Yours, etc.

CERTILMAN HAFT BALIN
BUCKLEY REMER &
HYMAN
Attorneys for
Defendant and
Counter-claim
Plaintiff
805 Third Avenue
New York, NY 10022

TO: KURZMAN KARELSEN
& FRANK
Attorneys for Plaintiff
and Counter-Claim
Defendants
230 Park Avenue
New York, NY 10169
(212) 867-9500

MILBANK TWEED
HADLEY & McCLOY
Attorneys for
Defendant AI
International
Corp.
One Chase Manhattan
Plaza
New York, NY 10005

APPENDIX B

APPENDIX B

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COURT OF APPEALS OF
THE STATE OF NEW YORK
- - - - - - - - - - - - - x

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,

Plaintiff-Respondent,

-against-

AI INTERNATIONAL CORP.

Defendant,

-and-

KAREN de KLEINMAN,

Defendant-Appellant.

- - - - - - - - - - - - - x

REPLY AFFIDAVIT

INDEX #8147/86

KAREN de KLEINMAN, :

Defendant-Appellant, :

-against- :

:

THE RESIDENTIAL BOARD OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG AND IRVING LEVITT, :

:

Counter-Claim Defendants-Respondents. :

- - - - - - - - - - - - x

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

KAREN de KLEINMAN, being duly sworn, deposes and says:

I am the defendant-appellant, appearing pro se, and I submit the following affidavit in reply to the opposing papers interposed by the plaintiff-respondent.

At the outset, the sole opposing affidavit is executed by Phyllis E. Leviton, an "associate" of the law firm representing the plaintiff-respondent. My records reveal that this attorney never executed any prior affidavits in behalf of the plaintiff-respondent. While she claims "familiarity with the facts," she obviously had no such knowledge thereof and therefore her moving affidavit should be disregarded.

I respectfully desire to emphasize that I have been personally handling this appellate aspect of the case pro se simply because I have "run out of money". Since 1985, when this bizarre tale commenced, I have incurred far in excess of $400,000 in payments of principal and interest on mortgages in connection with this property (in which

I have not been permitted to reside, since my purchase), real estate taxes, and condominium monthly charges, which while not paid pending the outcome of this litigation, have been accruing.

I have invested over 3 years of my life and energy, suffered innumerable slanderous and libelous characterizations, abuses and other forms of harassment, visited upon me by members of the condominium Board, endured extraordinary emotional, physical and financial hardships, and indeed, am on the threshhold of bankruptcy and foreclosures on my properties -- all of which was brought about by the Board's refusal to issue a single piece of paper, i.e., the waiver of its right of first refusal, which heretofore, and ever since, has always been routinely granted merely in the

normal course of business, and in many cases, after the closing of a purchase had taken place. On many occasions, I and other unit owners and prospective purchasers (some of whom I represented as their real estate broker and/or agent, thereby giving me personal knowledge of the facts), did not submit any financial statements, at all. Indeed, one of the basic key ingredients of condominium ownership was that the purchaser was not obliged to reveal his identity or complete financial background, as generally required in cooperative purchases. As Exhibit A, I have enclosed herewith, a recently circulated advertisement and solicitation by Sotheby's International Realty, a licensed real estate brokerage firm, offering a prestigious 5th Avenue condominium unit for sale, which

highlights as one of its attractive features:

> "Condominium ownership (no full financial disclosure required as would be in a cooperative building)."

In addition to those expenses directly relating to the subject condominium unit of this case, I have incurred in excess of $150,000 in legal fees, defending my rights in connection with this litigation, and two other related Supreme Court cases, Index #10516/86 and #7081/86, in which I was the plaintiff, and the Board, the defendant. In those cases, I was victorious in defending and protecting not only my condominium rights, but those of all condominium unit owners, as well. In the first case, I successfully obtained an Order from Judge Wilk, directing defendants to furnish me with

a current mailing list of unit owners and to permit me to examine the books and records of the condominium. In the latter case, the same Court struck down the Board's resolution involving nominating procedures, which (aimed only at me) prohibited real estate brokers, under the guise of an alleged conflict of interest, (never defined), from ever being nominated to serve on the Board. Plaintiff-Respondent's counsel and Douglas Elliman, the building's managing agent (also a licensed real estate broker and business competitor of mine), knew perfectly well from their daily experience and expertise in representing other condominiums, that this nominating procedure was contrary to every other building's practices, and indeed, violated our by-laws, which state that the only qualification for serving on

the Board, is unit ownership. Nevertheless, this issue presented a more irresistible and convenient opportunity for the Board, in concert with its attorneys, Kurzman, Karelsen and Frank, and its managing agent, Douglas Elliman, to ruin my prestige, respect and thriving brokerage business in the building, by labeling me "unqualified" to serve on the Board, and casting doubt on my character and reputation. Their complicity is easily understood, as their motives to censor, silence and destroy me, any way they could, were of mutual benefit.

Why was I compelled to commence actions in the Supreme Court to enforce my rights, as well as those of all other condominium unit owners, when the by-laws and the state laws, applicable to condominium ownership, were so

clearly in my favor? Was it equitable, that to enforce my rights, I incurred thousands of dollars in legal fees and sacrificed months and years of my life? How many other fellow unit owners throughout the state could afford or endure such an interruption in their normal business and personal lives, as I did?

While the Board arrogantly and blatantly refused to comply with my requests and my basic rights as an owner in accordance with the by-laws and other state laws, why did the same members of the Board elect to conceal themselves behind an untested and unprecedented provision of the by-laws, in voiding my sale? Bearing in mind their fiduciary duties, were the members of the Board truly acting in the best interests of all unit owners and for a proper

corporate and business purpose, when it elected to initiate this litigation, knowing the possibility and ramifications of what a lengthy and expensive lawsuit would do to the financial capabilities of the condominium?

And finally, one must ask the questions which I have asked myself so many times: "Why did the Board discriminate against me on so many different issues and occasions? Was it because the Board thought I was an easy target -- i.e., a single female, unprotected by a husband or powerful family or corporate influence? Would any of the outrageous abuses and harassment, repeatedly bestowed upon me by the members of the Board, ever have been contemplated, let alone implemented, had I been the wife of a

prominent individual, a member of a 'Fortune 500' company, or last, but not least, a man?" Ironically, I recall reading a news article in which John Grant, Chairman of the Olympic Tower Board at that time, and President or Chairman of the University Club in Manhattan, had refused to comply with a new state law which directed private men's clubs to open their doors to female members.

My only crime was that I asked too many probing questions regarding the affairs and operation of the condominium, sought to enforce my unit owner rights under the by-laws, reminded the members of the Board of their fiduciary duties to all unit owners, informed them that they would be held accountable for their actions as Board members and posed a serious challenge to

the previously self-perpetuated ("private club") structure of the Board. Certainly, my actions were clearly within my rights. But what is the truth behind the Board's behavior? For further enlightenment as to their true motives for their mean-spirited and vicious actions, I have attached hereto, as Exhibits B and C, copies of my 1985 and 1986 statements to the unit owners, entitled: OLYMPIC-GATE!

Plaintiff-respondent's papers refer to my previous law firms which included Phillips, Nizer, Benjamin et al., Certilman, Haft et al, and Myerson and Kuhn. While the Myerson firm did assist with settlement discussions for my benefit, due to my inability to meet their retainer requirements, they never formally appeared on my behalf. For

several months, we were both counting on the anticipated insurance claim settlement involving the fire which had destroyed one of my investment apartments, also in Olympic Tower. The proceeds of the settlement would have enabled me to guarantee my obligations under the firm's retainer agreement. Unfortunately, in July, after months of intensive negotiations with both my insurance company and tenant, we reached an impasse and it appeared that the resolution of the issue might not be achieved without a court trial -- which of course, meant years of waiting. At that time, Myerson and Kuhn returned my files and refused to proceed with the appeal.

Significantly, none of these law firms ever advised me of the specific "9-month requirement" to

perfect my appeal -- or for that matter, did they ever inform me of the availability of the "enlargement" application. Certainly, the enlargement papers would have involved a small amount of time and effort and would have, at least, protected my rights, and would have been both morally and ethically appropriate on their part, under the circumstances. It was only months after the "9-month period" had elapsed, that I first discovered, on my own, the above limitations and procedures for extension of my time to perfect my appeal.

While on the subject of attorneys, in view of Kurzman, Karelsen and Frank's expertise in the field of condominium representation, as well as the fact that the firm had represented

Olympic Tower from its inception, why then, in the midst of our litigation, did the Board import additional counsel, specifically Nicholas deB. Katzenbach, a member of the New Jersey firm of Riker, Danzig, et al, who strangely enough was also a Senior Vice President of I.B.M. Corporation and a close friend and colleague of T. Vincent Learson, a retired Chairman of I.B.M. and President of the Olympic Tower Board during this litigation? Why did the Board need such a "heavy-hitter?" Were these additional legal expenses also in the best interests of all the unit owners? Wasn't the Kurzman firm competent?

In my moving papers, I have discussed several other cogent reasons for my difficulties in previously processing this appeal, but I now respectfully implore the Court to

exercise its discretionary powers in order to correct this grave injustice against me.

I am asking leave of this Court to appeal herein, since the lower Court erroneously has denied me the right of review of an unjust determination by Judge Wilk. I ask for equitable intervention to correct this unjust determination.

In its opposition to appellant's application, the respondent has merely interposed "boiler plate" arguments: e.g., three copies of the moving papers, which have been served; a concise statement of appellant's factual contentions, which are actually contained in pages 5-9 of my moving papers; an allegation that appellant's papers were not served in timely fashion, which is untrue.

Above all, the appellant has demonstrated in its moving papers that the subject appeal merits review, i.e., the question of whether the condominium Board was acting within a standard of reasonableness or unreasonably, with malice and improper motives and in "bad faith", particularly to a fellow unit owner, to whom a particular duty is owed, in requesting the additional and further financial information, and once knowing that the additional information requested would not be forthcoming, in refusing to issue its waiver of the right of first refusal. I wish to note that the Board had not been by-passed and had had 5 months in which to exercise its right of first refusal, which it well knew was an impossibility, in any event, because the treasury didn't have the money and a majority of

66-2/3% of unit owners, who might attend a special meeting if it had been called, would never have given their permission for the incurment of the $995,000 purchase price to have been borrowed, since the same unit owners would not even approve the Board's request to borrow $250,000 for the refurbishment of our main amenity, the lobby.

Plaintiff-respondent states that my case lacks legal significance, novelty or public importance to warrant review, and that my appeal lacks merit!

This brings up the larger question of the public role of comdominiums and their influence in the daily lives of thousands of citizens in our state. More and more comdominium determinations have become subjects of debate, controversy and difficulties

encountered by the public in an increasing manner. Clearly the problems created by this comparative novel entity in our community requires analysis, public review and above all, finality of court determinations. This is a classic case which requires immediate resolution.

The following excerpts appeared in an article in the New York Law Journal on September 17, 1986, written by members of plaintiff-respondent's counsel, specifically Stanley Margolies, Phyllis Weisberg and Phyllis Leviton, entitled:

CONDOMINIUMS ARE INCREASINGLY POPULAR BUT RAISE CRITICAL ISSUES FOR BUYERS.

> "Condominiums have arrived in New York. Although virtually no condominiums existed in the state before passage of the

Condominium Act in 1964, they have become increasingly popular since that time. Their popularity is demonstrated by new residential construction in Manhattan; according to a recent article in the New York Times, out of 129 new buildings now under construction in Manhattan, 76 are condominiums and only one is a cooperative (the rest are rentals)."

"In contrast to cooperative apartments, condominum 'units' may be sold and leased without the board of directors' approval."

"As in any new area of the law, counsel may look to other

bodies of law for guidance. If a proxy question exists, for example, counsel might look to Section 609 of the Business Corporation Law ("BCL"). To date, however, no case or other authority holds that the BCL applies or even that it is analogous."

"Depending on the organizational structure, a condominium would be governed by the General Associations Law. Unfortunately, however, the General Associations Law deals with few, if any, condominium issues."

"A condominium Board may request information, such as a

financial statement from a prospective buyer, to enable it to decide whether or not to exercise its right of first refusal. Some by-laws require unit owners to submit in writing such further information as the Board may reasonably request, but, as yet, there has been no ruling on the nature or extent of the information the Board may so require."

"In the event that a sale takes place without the Board's having been given the opportunity to exercise its rights, such a sale is ordinarily voidable under the by-laws."

*(Clearly in my case, the Board was not by-passed and had had 5 months of opportunity in which to exercise its right of first refusal.)

"The increasing popularity of condominiums and their new and unique legal characteristics underscore inadequacies in the existing law. We have tried here to highlight significant issues which we believe are worthy of consideration by counsel, the courts and legislature."

(All emphasis has been added.)

It would appear that the authors of this article, plaintiff-respondent's own

counsel, have defeated their allegation in behalf of plaintiff-respondent, that my case lacks legal significance, novelty or public importance to warrant review.

Several of the issues involved herein were discussed by Ray Kerrison, the noted New York Post Columnist, in a series of articles in 1986, in which he raised many of the same arguments and grievances as mine with regard to condominium and co-op Boards' abuses and the need for legislation or court intervention, as the only means, to protect the rights of all condominium and co-op unit owners, "from the humblest to the richest." He particularly discusses the plight of dissident unit owners who have no remedy in enforcing their rights or protecting

themselves from the retaliation of the members of the Board, the repeated frustration of owners seeking to inspect the books and records, questionable contractual arrangements made by members of the Board involving operating machinery and equipment, interior design materials, health club operation and miscellaneous expenses. Overall, there seems to be a basic abuse of Boards repeatedly breaching their fiduciary duties and obligations towards all unit owners. Their arrogant behavior in refusing to be held accountable for their actions and to respect the guaranteed rights as stated in the by-laws must be stopped. Attached hereto, as Exhibits D and E are copies of Mr. Kerrison's articles.

It was an abuse of discretion, by the lower Court, in light of the prevailing circumstances, to turn me out of the Court! I ask for understanding and compassion in reviewing the erroneous determination of the lower Court in denying me an opportunity to present my case in Court. This Court is truly my Court of last resort!

This is not a plea for intervention in the processes of the Appellate Division, but rather a plea for correcting a manifest injustice. If plaintiff-respondent's erroneous arguments are accepted here, then no rational basis ever exists for any review of decisions of the appellate division. In other words, there would be no necessity for a Court of Appeals to ever review any decision of the Appellate Division -- no matter how flagrantly erroneous it may be!

Finally, I have included as Exhibit F, a copy of the recently received NOTICE of the Annual Meeting for Olympic Tower. This simple document evidences the censorship and disappearance of many of the principles of democratic government which I have been fighting so hard to preserve. It reads almost like one would expect to receive from an Iron Curtain country.

1. The meeting will be held at the Hotel Intercontinental, which is managed by our outging president and nominee for re-election, Fred Peelen.

2. We are invited to elect two members of the Board, who will serve for three years, and are given NO CHOICE, as

the same two retiring members were the only candidates offered to the nominating committee, which was coincidentally appointed by the outgoing president, Mr. Peelen.

3. The nominating committee, appointed by Fred Peelen, has the audacity to tell us that it finds both Messrs. Peelen and Niemeth, to be well qualified and recommends their election.

4. We are then instructed that there will be no nominations from the floor, (further insuring no challenges to their self-

perpetuating mechanism as well as restricting any new ideas or opinions from being expressed for the next three years).

5. Adding insult to injury, THEY ASK US TO BE SURE TO VOTE!!!

Is this America or the Soviet Union? I simply want to cry! Where are the other candidates, you might ask? Since the Board has made me its target for so many years as an example to all unit owners who would dare volunteer (uninvited by the Board) to serve and contribute to their fellow unit owners by seeking election to the Board, <u>not one unit owner would take such a risk to protect even his own rights</u>! Indeed, the

Board's lesson has been well-learned! Fear prevails, when democracy ends!

I believe I have explained without dispute, the equitable and extenuating nature of my inability to perfect my appeal in timely fashion in the Appellate Division -- as well as my total ignorance of the procedures to enlarge my time to process an appeal.

Nor should it be overlooked, that my well paid attorneys, likewise contributed to the unfortunate and difficult predicament and circumstances, which I did not create.

My appeal to this Court is timely and within its jurisdiction. I now, most respectfully, ask for my day in Court, especially since my appeal has merit.

WHEREFORE, I pray for the granting of my application.

_____

Sworn to, before me,
this 30th day of April,
1989.

_____
Notary Public

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FOR IMMEDIATE RELEASE

(May 7, 1985)

O L Y M P I C - G A T E ? ? ?

GIVEN THE PREMISE THAT THE BOARD OF MANAGERS IS SUPPOSED TO SERVE IN THE BEST INTERESTS OF ALL UNIT OWNERS AND AT THE PLEASURE OF THE UNIT OWNERS, THE FOLLOWING QUESTIONS ARE PRESENTED FOR YOUR REVIEW:

IS IT IN THE BEST INTERESTS OF THE UNIT OWNERS THAT OUR PRESIDENT, MR. DONALD KREINDLER, WAS NOT PRESENT AT LAST YEAR'S ANNUAL MEETING . . . THE ONE DAY OF THE YEAR WHICH EACH OF US AS OWNERS EXPECT THE IMPORTANT ISSUES CONCERNING OUR HOMES AND INVESTMENTS TO BE DISCUSSED?

WAS IT IN THE BEST INTERESTS OF THE UNIT OWNERS TO BE DENIED THAT

OPPORTUNITY WHEN THOSE PRESENT IN PERSON OR BY PROXY LAST YEAR WERE INFORMED THAT THE MEETING COULD NOT TAKE PLACE DUE TO THE ABSENCE OF A QUORUM? (WHICH WAS QUESTIONABLE)

The reality was that at last year's Annual Meeting, when it became apparent that there was a serious challenge by me, Karen de Kleinman, to the re-election of the proposed Board Member, the meeting was purposely adjourned!

The Board Member running for re-election was Mr. Kampouris, who owned a studio unit, in which he rarely, if ever, resided and which had been on the market for sale for several months.

I, on the other hand, had invested in excess of two million dollars in the ownership of 3 units, had been involved in the NY real estate business for over a decade, had been involved with Olympic Tower since its initial planning stages, and had sold and leased numerous units to my clients, whose interests and desires to have me serve on the Board were expressed within 71 PROXIES which I had presented and registered prior to the meeting. Moreover, several unit owners were personally present to support my candidacy.

IS IT IN THE BEST INTERESTS OF THE UNIT OWNERS TO HAVE ABSENTEE OWNERS SERVE ON THE BOARD? DOES A SECRETARY, WHO LIVES IN TEXAS AND OCCASIONALLY VISITS N.Y. TRULY BEST SERVE THE NEEDS OF A N.Y. CONDOMINIUM BOARD OF MANAGERS? WHY HAS THE BOARD CONTINUALLY PERPETUATED THESE MEMBERS' PARTICIPATION ON THE BOARD?

IS IT IN THE BEST INTERESTS OF THE UNIT OWNERS TO DENY THE REQUEST OF A UNIT OWNER, FOR THE COMPLETE DOCUMENTATION OF THE HEALTH CLUB IN ORDER TO CLARIFY HIS AND OUR RIGHTS? PURSUANT TO THE BY-LAWS, ARTICLE VII, SECTION 3, WE HAVE THE RIGHT TO EXAMINE THE BOOKS OF ACCOUNT FOR THE CONDOMINIUM.

ACCORDING TO THE 1983 FINANCIAL STATEMENT, NOTE 3 STATES: "IN

CONSIDERATION FOR THE AMOUNT CONTRIBUTED BY THE CONDOMINIUM RESIDENTIAL SECTION, THE RESIDENTIAL UNIT OWNERS OF THE CONDOMINIUM AND THEIR GUESTS SHALL HAVE THE UNRESTRICTED USE OF THE HEALTH CLUB FACILITIES FOR A LEAST A PERIOD OF TEN YEARS."

INITIALLY, THE UNIT OWNER CALLED MR. SHERRY, OUR RESIDENT MANAGER, IN EARLY 1984, AND WAS ADVISED THAT THE AUDITOR'S REPORT WAS INCORRECT WITH REGARD TO NOTE 3, REFERRING TO THE RESTORATION OF THE HEALTH CLUB. SUBSEQUENTLY ON APRIL 10, 1984, THE UNIT OWNER WROTE TO THE AUDITORS AND WAS ADVISED BY WRITTEN REPLY THAT THE STATEMENT WAS CORRECT AND THAT HE SHOULD CONSULT MANAGEMENT AND THE BOARD OF MANAGERS FOR FURTHER INFORMATION AND CLARIFICATION. AT THAT TIME, THE UNIT OWNER REQUESTED FROM

MANAGEMENT, A COPY OF THE COMPLETE AGREEMENT PERTAINING TO THE HEALTH CLUB. SINCE THEN THE UNIT OWNER HAS CONTINUALLY BEEN DENIED THIS INFORMATION BY MANAGEMENT, MR. KREINDLER AND EVEN THE OLYMPIC TOWER ATTORNEYS!

WHAT IS THE BIG SECRET?

IS IT IN THE BEST INTERESTS OF THE UNIT OWNERS THAT OUR PRESIDENT, WHO APPROVED AND ALLOCATED THE $25,000 CAPITAL CONTRIBUTION AND $25,000 INTEREST FREE LOAN FOR 84 MONTHS (which interest, computed today, would be the equivalent of in excess of $15,000) TOWARDS THE RESTORATION OF THE HEALTH CLUB IN 1983, ANNOUNCE IN A LETTER TO ALL UNIT OWNERS (dated May 16, 1984) THAT HE VISITED THE CLUB FOR THE FIRST TIME, APPROXIMATELY 7 MONTHS AFTER ITS

OPENING AND INFORMED US THAT WE SHOULD TRY IT SOON AS MEMBERSHIP WAS LIMITED?

WHICH IS IT? UNRESTRICTED USE OR LIMITED MEMBERSHIP??? WHY HAS IT TAKEN OVER ONE YEAR OF RUDE AND ARROGANT DISREGARD OF THE RIGHTS OF A UNIT OWNER, FOR THE BOARD TO REMIT THE DOCUMENTATION REQUESTED?

FURTHERMORE, I HAVE BEEN ADVISED, THAT THE 1984 FINANCIAL STATEMENT (if it is ever delivered to us) WILL FIRST TELL US ABOUT THE ADDITIONAL $1,000 PER MONTH SUBSIDIZATION OF THE HEALTH CLUB, WHICH THE BOARD AGREED TO AND COMMENCED LAST JUNE FOR AN UNDEFINED PERIOD.

IS IT IN THE BEST INTERESTS OF THE UNIT OWNERS TO HAVE ANXIOUSLY WAITED FOR OVER 2 YEARS FOR A NEW LOBBY AND DECOR

THROUGHOUT THE BUILDING'S COMMON AREAS, ONLY TO HAVE BEEN GIVEN WHAT MOST UNIT OWNERS CONSIDER TO BE A MOST UNINSPIRED AND DISAPPOINTING DESIGN ATTEMPT! WE SUPPOSEDLY BOAST THE MOST DISTINGUISHED ROSTER OF ANY BUILDING IN THE WORLD; THEREFORE, ONE WOULD HAVE EXPECTED OUR DECOR TO BE COMMENSURATE WITH OUR WORLD-WIDE PRESTIGE, ELEGANCE AND STATUS!!!

WHY THEN, WERE THE WIVES OF THE PRESIDENT AND TREASURER, APPOINTED BY THE PRESIDENT, TO BE THE EXCLUSIVE COMMITTEE, GIVEN, WHAT WOULD APPEAR TO BE CARTE-BLANCHE IN ALL DECISIONS CONCERNING OUR MOST IMPORTANT COMMON ELEMENT. THE STATEMENT WHICH SETS THE TONE FOR OUR ENTIRE BUILDING?

WAS IT IN THE BEST INTERESTS OF THE UNIT OWNERS NOT TO HAVE BEEN GIVEN THE OPPORTUNITY AND COURTESY OF REVIEWING A PRESENTATION BY THE COMMITTEE DEFINING THE DESIGN CONCEPT WITH DRAWINGS OF THE PLANNED FURNISHINGS AND SAMPLES OF THE FABRICS AND CARPETING, AS IS CUSTOMARY? AND PERHAPS, UNIT OWNERS COULD HAVE EXPRESSED THEIR LONG-TERM DESIRE OF HAVING THE MUCH NEEDED REVOLVING DOOR AT THE ENTRANCE INSTALLED IN ADDITION TO THEIR DESIRE TO HAVE MAGNIFICENT PLANTS AND FLOWERS AND SOME ORIGINAL ART IN THE LOBBY?

WE, AS UNIT OWNERS, HAD THE RIGHT TO EXPECT THAT A PROMINENT DESIGNER OF WORLD-RENOWNED STATUS WOULD HAVE BEEN ASSIGNED TO THIS PROJECT. WE CERTAINLY DESERVE IT!

IS IT IN THE BEST INTERESTS OF THE UNIT OWNERS:

...THAT THE RESIDENTIAL BOARD HAS REFUSED FOR YEARS TO COOPERATE WITH THE COMMERICAL SECTION REGARDING THE UNSIGHTLY MESS OF OUR GARBAGE?

...THAT EXTERMINATORS ARE NECESSARY IN OUR RESIDENCES?

...THAT MOST UNIT OWNERS HAVE LIVED WITH FILTHY DIRTY WINDOWS IN MILLION DOLLAR APARTMENTS FOR YEARS? OUR BOARD MEMBERS' RESPONSE TO THIS PROBLEM WAS TO MERELY BLAME THE COMMERCIAL SECTION'S WINDOW-WASHING MACHINE FOR MALFUNCTIONING ... WHY WERE THEY NOT ANXIOUS TO FIND ANOTHER SOLUTION TO THE PROBLEM? MY WINDOWS WERE

ALWAYS CLEAN, DUE TO A LITTLE INGENUITY AND CREATIVITY ON MY PART.

...THAT THERE ARE CONTINUING THEFTS IN THE BUILDING WHICH MANAGEMENT REFUSES TO ADDRESS, CORRECT OR IN SOME CASES, EVEN ADMIT?

...THAT THE SECURITY IN THE BUILDING IS INADEQUATE AND THAT THE SECURITY KEY BOX IS NOT PROPERLY SUPERVISED? THIS POSES A SERIOUS SECURITY RISK TO ALL OF OUR HOMES!

...THAT THE MAIDS ARE PERMITTED TO USE OUR MAIN ENTRANCE AND ELEVATORS, AND TO CLUTTER THE CONCIERGE AREA WHILE RETRIEVING THEIR KEYS, INSTEAD OF USING

THE SERVICE ENTRANCE AND SERVICE ELEVATORS AS PROVIDED FOR IN THE HOUSE RULES PURSUANT TO PARAGRAPH NUMBER 13.

...THAT OUR ELEVATORS ARE SLOW IN PICKING US UP AND ARE ALSO HAVING CONTINUAL MAINTENANCE PROBLEMS?

...THAT OUR NEWSPAPER DELIVERIES GET LATER EACH DAY? MOST EXECUTIVES BEGIN THEIR DAY BETWEEN 6-7 A.M.!

...THAT OUR DRY CLEANERS IS LOCATED IN NEW JERSEY AND DOES NOT OFFER THE QUALITY SERVICE NECESSARY FOR THE RESIDENTS OF OUR BUILDING?

...THAT OUR INTERCOMS REGULARLY TAKE A DAY OR TWO OFF, EVERY WEEK?

...THAT WE HAVE NEVER HAD A PRACTICE FIRE OR EMERGENCY EXIT DRILL? MANY RESIDENTS HAVE NO IDEA OF HOW TO REACH THE EMERGENCY EXITS, SOME OF WHICH ARE LOCKED!

IS IT IN THE BEST INTERESTS OF THE UNIT OWNERS THAT WE ARE LOSING KEY EMPLOYEES WHO HAVE INVESTED OVER 8 YEARS OF THEIR LIVES IN OUR BUILDING?

OUR CHIEF ENGINEER RECENTLY QUIT OUT OF, WHAT HE EXPRESSED TO ME TO BE, UTTER FRUSTRATION IN HIS ATTEMPTS OF GETTING THE ATTENTION AND COOPERATION OF THE BOARD OF MANAGERS. THIS NOW PLACES OUR BUILDING IN THE HANDS OF OTHER EMPLOYEES, WHO MAY NOT BE AS CAPABLE OR AS FAMILIAR WITH ALL THE MULTITUDE OF MACHINES AND SYSTEMS WHICH THIS BUILDING

DEPENDS UPON IN ORDER TO SERVICE OUR NEEDS. ADDITIONALLY, WE MAY NOT BE AWARE OF IMPENDING PROBLEMS OR LINGERING ONES WHICH ONLY HE KNEW ABOUT!

IS IT IN THE BEST INTERESTS OF THE UNIT OWNERS THAT THE TREASURER, MR. GRANT, HAS BEEN UNABLE OR UNWILLING, FOR TWO CONSECUTIVE YEARS, TO SUBMIT THE FINANCIAL STATEMENTS OF THE CONDOMINIUM TO THE UNIT OWNERS, WITHIN THE FOUR MONTH GRACE PERIOD FOLLOWING THE CLOSE OF OUR FISCAL YEAR IN SEPTEMBER, AS IS CLEARLY PROVIDED FOR IN THE BY-LAWS?

WHY IS HE KEEPING US IN THE DARK WHEN THIS ISSUE CONCERNS OUR FINANCIAL INVESTMENTS? IS THERE ANYTHING TO HIDE?

WE ARE NOW IN OUR 8TH MONTH OF OPERATIONS OF FISCAL 1985 AND WE STILL

HAVE NOT OFFICIALLY RECEIVED THE 1984 FISCAL REPORT!! YET, THE NOMINATING COMMITTEE, APPOINTED BY THE PRESIDENT, CONSISTING OF BOARD MEMBERS, SUGGESTS, RECOMMENDS AND REQUESTS THAT MR. GRANT BE RE-ELECTED AS OUR TREASURER, COMMENDING HIM AND THEMSELVES FOR GOOD AND EFFICIENT MANAGEMENT!

THIS IS ABSOLUTELY LUDICROUS!!!!!

BY WHAT POWERS OR RIGHTS HAVE THE MEMBERS OF THE BOARD TAKEN THIS MOST ARROGANT, DISTASTEFUL AND ALL-MIGHTY POSTURE TOWARDS THE UNIT OWNERS THEY SERVE? IT IS MORE THAN EVIDENT THAT THEY HAVE NOT COMPLIED WITH THE OLYMPIC TOWER BY-LAWS IN THE EXERCISE OF THEIR OFFICIAL DUTIES IN THEIR OFFICIAL CAPACITIES AND IN THEIR FIDUCIARY RESPONSIBILITIES TO THE UNIT OWNERS!

THEIR BEHAVIOR SHOULD NOT BE TOLERATED NOR ACCEPTED ANY LONGER!!!

DOCUMENTATION RELATING TO THE ABOVE ISSUES IS READILY AVAILABLE FOR YOUR PERUSAL BY CALLING: KAREN de KLEINMAN, UNIT 39-E / x512 or (212) 308-2058.

PLEASE GIVE PROGRESS A CHANCE BY VOTING THE PINK PROXY . . . FOR THE PROTECTION OF OUR MUTUAL INVESTMENTS . . . AND FOR THE ENJOYMENT OF OUR MUTUAL COMFORTS!

THE NEW BOARD OF MANAGERS, IN FORMATION, WILL BE COMPRISED OF EXTREMELY CAPABLE, KNOWLEDGEABLE AND WILLING OWNERS, ANXIOUS TO SERVE YOU PROPERLY AND EXPEDITIOUSLY. WE WELCOME YOUR PARTICIPATION IN OUR EFFORTS AND LOOK FORWARD TO HEARING FROM ALL OF YOU.

TO: ALL UNIT OWNERS

FROM: KAREN de KLEINMAN

DATE: MAY, 1986

O L Y M P I C - G A T E II ? ? ?

Fear, arrogance, harassment, omissions, improprieties, litigation, illegal resolutions, improperly-conducted meetings and adjournments, refusal to submit records, refusal to respond to a duly-executed petition calling for a Special Meeting to remove the entire Board!

The Board is guilty of all of the above.

Last year, the Board repeatedly denied me, and my attorneys, the "confidential" unit owners mailing list . . . (regularly used to promote Douglas Elliman's own advertising!). My 7-page

"Pink-Sheet", OLYMPIC-GATE ???*, documented my concerns. Most of you were deprived of your rights, because the Board removed that letter from your mailboxes. Furthermore, the Board prevented me from running for election by adopting an illegally-contrived resolution, disqualifying brokers. This amounted to an improper by-law amendment.

Subsequently, I retained Martin Stein of the internationally-renowned law firm, Phillips, Nizer, and commenced proceedings to overturn the resolution. While waiting the Supreme Court's decision, the Board is magnanimously letting me run, restricting my remarks to 600 words! Incidentally, you are paying the legal fees for the

* Copies are available.

litigation, in which the Board is defending the very provision of its resolution now being waived. You are probably also unaware of extensive legal fees in connection with a prior action maliciously commenced by the Board against me last December, to nullify my purchase of Unit 26-A. On April 17, 1986, three members of the Board unexpectedly appeared in Court anxious to achieve a "global settlement" on all issues, including my $5 million counter-claim, stating that any monetary settlement would come from you . . . the innocent, individual unit owners! This concept is ludicrous!

Another lawsuit will seek to overturn last year's improperly-conducted Meeting and election. The court reporter's transcript evidences Board members not only acted in bad faith, but three were

not even duly elected. Remember, the Board's insurance policy only covers good-faith acts by duly-elected Board members.

Why is the Board so afraid? What was the true motive behind its illegal resolution?

Why have Board members perpetuated themselves in office and hindered others who wish to serve? Isn't it time we clean house?

Why has no Board member ever personally spoken to me on the issues?

Why does the Board continually endorse absentee or travelling candidates as opposed to

me, a full-time resident - owner of four units, who can offer daily supervision? One must be here to be effective. I nominated Fred Peelen; guess who nominated Mr. Niemeth?

Why has it taken ten years and two lawsuits to acquiesce to a properly-conducted Annual Meeting and election?

Why has our Board and its counsel, repeatedly refused inspection of books and records? What are they hiding? Must additional lawsuits be initiated?

Why has the Board hidden Mr.

Bariman's 20-year, free lease for the health club? Exactly what are the details behind this multi-million dollar "sweetheart" deal?

Why didn't the Board pursue the $6 million Sponsor lawsuit and other issues as diligently as it is pursuing me?

Why has the Board tolerated Douglas Elliman's innumerable, repeated inefficiencies instead of replacing them or considering self-management? Is there a hidden, ulterior motive? Expecting Douglas Elliman to appreciate and implement the high standards we deserve is

unrealistic; it runs OLYMPIC like hundreds of others.

Why do the Board's rules and regulations antagonize, penalize and inconvenience us?

Why is the ill-conceived security system monitoring only basement doors, which employees use, neglecting the main entrance, which we use?

Why is OLYMPIC TOWER no longer New York's finest?

<u>LET'S RETURN EFFICIENCY, PRESTIGE, ELEGANCE AND GRACIOUS LIVING TO OLYMPIC TOWER!!!</u>

NEW YORK POST

Thursday, May 22, 1986

(Page 13)

TURNING UP THE HEAT ON CO-OP DIRECTORS

A friend, whom I shall call Harry Roberts, was bristling as he clutched the latest financial statement issued by the board of directors of his co-op apartment complex in Rego Park, Queens.

"Look at this," Harry fumed. "The more the price of heating oil falls, the higher our heating costs are in this place.

He showed me the records. They disclosed that in 1983, the Park City Co-op, where Harry is a shareholder-in-residence, spent $863,000 for fuel.

In 1985, when heating oil was substantially cheaper the bill had inexplicably shot up to $950,000.

How could that be? Harry does not

know and that's what drives him to distraction. He cannot get any answers, he says because his board refuses to explain and, even worse, will not open the books for full, impartial scrutiny.

In short, Harry feels that he -- and possibly tens of thousands of other New Yorkers like him -- who made the biggest investment of their lives in buying a co-op, have become hostages to their own boards of directors.

"Look at the miscellaneous expenses on that statement," Harry said. "They've got 'em under three separate headings, totalling more than $60,000. In a co-op, that's a damn lot of miscellaneous.

"Look at the hardware. They're billing us $277,000 -- more than a quarter of a million -- for hardware. For what? Nobody knows and nobody can find out."

In a co-op, as most understand, the owner of each apartment is a shareholder in the corporation. The shareholders elect a board of directors, who usually receive neither salary nor expenses, to oversee the enterprise.

According to the latest estimate of the Real Estate Board, there are about 174,000 co-ops in the city.

When Harry's building went co-op in 1981, the board of directors started out with a reserve fund of $1.5 million. The directors promptly spent most of it on projects that knocked Harry's eyeballs sideways.

Inevitably, the board raised maintenance fees -- twice -- to keep the co-op going.

So many shareholders were distressed at the board's spending ways that they did their own investigation and published the findings in a pictorial

report to all shareholders in 1984.

Here are some of the things they found:

> The board spent $220,000 to install a new heating system, promising that the annual fuel bill of $805,000 would be slashed by $120,000 -- or 15 percent.

Instead, the heating bill rose by $57,000. Today, it is $105,000 higher.

Soon after the system was installed, its manufacturer went bankrupt.

> The board spent more than $60,000 on carpeting and tile. The carpet was installed at a cost of $20.39 per yard over existing padding.

Suspicious at the high cost and apparent inferior quality of the carpet, shareholders took samples to comparison shop with other dealers. The highest

quote given them for the same or similar carpet was $11 per yard -- with new padding thrown in.

When the shareholders checked out the supplier of the co-op's carpet, they found it to be a ratty hole-in-the-wall joint out in Freeport, L.I., sandwiched between a supermarket and an ice machine.

The board spent $108,000 for new roofing that carried a 10-year guarantee against leaks. Immediately after installation, the roofs began leaking.

The co-op bylaws state that no director shall receive salary or compensation for services but, in Harry's place, the phone bill ran above $8000 for calls going to such places as Kansas, California, Texas,

Canada and Israel.

For four years, Harry says, he and others have been attempting to secure a proper accounting for all expenditures, only to be stymied at every turn.

A committee, formed to review the books and records, reported to shareholders: "The board of directors used every tactic at their disposal to make this task impossible to accomplish."

"They did this in complete violation of the guaranteed rights as stated in our proprietary leases."

"The more determined we were to make the most of each limited opportunity to review the books and records, the more obstacles were placed in our path."

The report stated that those making the inquiry were told flatly that no questions would be answered.

Why don't the shareholders throw the board out and elect a new board?

"Easier said than done," Harry moaned. "The board is entrenched. It has great power because you can't sell your apartment unless the board approves the buyer. Besides, proxy votes are not scrutinized."

What Harry wants is for the feds to look into the operation of co-ops. He says it is no good for the state to do it because the state operates co-ops and has a vested interest.

"If you look over the city, you will find thousands of co-op people like us, completely helpless in attempting to have checks and balances on the board of directors."

I called a member of Harry's board, Stanley Goldberg, to see what he had to say.

"Well," said Stanley, "there used to be a lot of dissension out there but, as far as I know, it's pretty peaceful

now. They keep reelecting the same board each year."

When I relayed this, Harry almost popped a cork. "They've squandered our money terribly and there is no recourse."

"I know another co-op that started out with a reserve fund of $2.5 million and today they have more than $3 million. We've got nothing."

All Harry Roberts wants is a full accounting of money spent, a reasonable request. Without it, he remains a prisoner in his own co-op.

NEW YORK POST

Monday, June 9, 1986

(Page 9)

RICH OR NOT, CO-OP TROUBLES HIT YOU WHERE YOU LIVE

When Aristotle Onassis and partners opened the doors to the Olympic Tower on Fifth Avenue in 1974, it instantly became one of the most desirable residential and commercial addresses in Manhattan.

A shiny new, architectural beauty shooting 51 stories into the sky, with picture postcard views overlooking St. Patrick's Cathedral, the Olympic pulled the money set from everywhere, including flight capital from the Mideast, South America and Europe.

Among them was Adnan Khashoggi, the wealthy Arab arms dealer, who snapped up 16 condo apartments over two whole floors and whacked them into one big,

comfy pad.

When Onassis died, the Olympic lost not only its figurehead but some of the mysterious aura clinging to the bricks and glass and steel.

Soon, its position was uprooted by a new player, Donald Trump, who not only strung up a tower to eclipse the Olympic but through his presence on the premises and his flamboyant profile was able to extract prices way over the Onassis monument.

As a result, the Olympic today is a battleground with some of its owners waging war against the board of managers against a backdrop of flying lawsuits.

The chief complaint is that the Olympic board is defiantly unresponsive to the needs of the owners and the building, proving that you don't have to live in a co-op in Queens or a condo in Brooklyn to find yourself frustrated and

fuming at the people you elected.

It happens to millionaires, too.

Up front leading the charge at Olympic is a former concert pianist, Karen de Kleinman, who owns four condominiums in the building.

Karen knows her way around a building as much as a keyboard. She was once the assistant to the president of a leading real estate lobby in Washington, D.C., and these days heads her own residential brokerage firm.

She figures there is a bigger future in high-rises than high notes.

Dismayed at just about everything that has been happening at Olympic (windows in million-dollar apartments were not washed for years), Karen decided to run for election to the board.

Now see what happened to her. The board, composed of all sorts of rich go-getters, held a meeting and passed a

secret resolution barring Karen on the grounds her occupation constituted "a conflict of interest."

Five months later, they disclosed the existence of this nifty midnight ambush.

Karen called her attorney, Martin Stein, and sued. The matter is still before the courts but the board, without explanation, suddenly flip-flopped and allowed her to run in this year's election, later this month.

Aside from this flagrant example of muscle-flexing, here are some other board activities that prompts Karen to call it "arrogant and improper":

> The board entered into a secret agreement to grant a man a free, 10-year lease to run a health club on the premises, providing him with a $25,000 grant and a $25,000

interest-free loan, guaranteed privately by a member of the board.

The health club is such a bust that the operator has not paid a single installment on the loan, the board is now subsidizing him at the rate of $1000 a month -- and now wants to keep the club going with an annual $125,000 subsidy.

All efforts by Karen to get the documents on what she calls this "sweetheart deal" have been rebuffed.

"Why does the board repeatedly refuse inspection of the books and records?" she asked. "What are they hiding?"

The board sued the sponsors for $6 million and to Karen's astonishment settled for $357,000. Why? She gets no answers.

The board refused to give Karen a list of the Olympic condo owners, depriving her of the chance to present her election case to them.

The board, however, allows the managing agents to solicit all condo owners with various business propositions etc.

In tne heat of the battle, the board sued Karen in an attempt to strip her of ownership of her fourth condo in the tower. She replied with a $5 million counterclaim.

Said Karen: "Olympic Tower should be the No. 1 building in New York as it used to be. There is nothing to compare with it, if it were properly managed and supervised."

Well, she has a substantial financial stake in it and no one can blame her for protecting her investment.

The pertinent issue for our purposes, however, is the responsibility of boards of managers or directors in co-ops and condos.

This issue was first raised here a couple of weeks ago concerning a co-op in Rego Park, Queens.

Many dissatisfied co-op and condo residents from all round the state called in response, complaining of boards who entrench themselves, enter into highly questionable arrangements and contracts and illegally refuse inspection of the books.

The problem affects everyone from the humblest to the richest.

OLYMPIC
TOWER

OLYMPIC TOWER CONDOMINIUM

NOTICE OF

ANNUAL MEETING OF UNIT OWNERS

MAY 25, 1989

NOTICE IS HEREBY GIVEN that the Annual Meeting of Unit Owners of OLYMPIC TOWER CONDOMINIUM is called and will be held on Thursday, May 25, 1989, at 5:00 P.M., at the Hotel Inter-Continental (Astor Room), ground floor, 111 East 48th Street, New York, New York, for the following purposes:

1. To elect two (2) members of the Board of Managers, Residential Section, to serve for a term of three years and until their

successors shall have been elected and qualified;*

2. To transact such other business as may properly come before the meeting or any adjournments thereof.

BY ORDER OF THE BOARD
OF MANAGERS

Dated: New York, New York
April 14, 1989

Please Note the new location for this year's annual meeting.

* (The owners of the Commercial Section will designate one (1) member of the Board of Managers representing that Section)

OLYMPIC
TOWER

OLYMPIC TOWER CONDOMINIUM

Proxy Statement

ANNUAL MEETING OF UNIT OWNERS TO BE

HELD ON MAY 25, 1989

TO THE UNIT OWNERS OF
OLYMPIC TOWER CONDOMINIUM
641 Fifth Avenue
New York, New York 10022

Dear Unit Owner:

You will find enclosed the formal Notice of Meeting and Proxy for the Annual Meeting of Unit Owners, which will be held this year on Thursday, May 25, 1989, at 5:00 P.M. at the Hotel Inter-Continental (Astor Room), ground floor, 111 East 48th Street, New York, New York. You are cordially invited to be present at the meeting. Cocktails and hors d'oeuvres will be served after the meeting.

At this meeting, the Residential Unit Owners will elect two (2) members of the Board of Managers to serve for a term of three years and until their successor shall have been elected or qualified.

UNIT OWNERS WHETHER OR NOT PLANNING TO ATTEND THE MEETING, ARE URGED TO SIGN AND RETURN THE PROXIES PROMPTLY, INDICATING THE MANNER IN WHICH THEY WISH THEIR PERCENTAGE INTEREST VOTED. ANY UNIT OWNER RETURNING A PROXY MAY REVOKE IT AT ANY TIME BEFORE THE VOTE AT THE MEETING.

The terms of FRED G. PEELEN and CHARLES F. NIEMETH expire at this year's annual meeting. Both these Board Members agreed to stand for re-election if nominated.

The Board appointed a Nominating Committee consisting of MR. OTTO A. KALESTSCH, Chairperson, MR. JOHN L.

GRANT and MRS. SANDY NEURINGER and by letter, dated February 14, 1989, invited the unit owners to submit nominations.

In accordance with the resolution of the Board governing nominations, as adopted on January 20, 1988, the Nominating Committee received nominations from the Unit Owners for the two positions on the Board to be elected this year, and reviewed the qualifications of nominees.

The Nominating Committee received the nominations of:

MR. FRED G. PEELEN, AND

MR. CHARLES F. NIEMETH

No other nominations were received. The time to submit written nominations has expired and nominations may not be accepted from the floor at the annual meeting.

The Nominating Committee finds both Messrs. Peelen and Niemeth to be well

qualified and recommends their election.

MR. FRED G. PEELEN is presently the President and a member of the Board of Managers of OLYMPIC TOWER CONDOMINIUM. He is Vice-President and Managing Director, Hotel Inter-Continental, New York.

MR. CHARLES F. NIEMETH is presently the Treasurer and a member of the Board of Managers of OLYMPIC TOWER CONDOMINIUM. He is the managing partner of the New York office of the law firm of O'Melveny and Myers.

PLEASE BE SURE TO VOTE, WHETHER AT THE MEETING OR BY PROXY. IF YOU DO NOT ATTEND THE MEETING, OR SIGN AND SUBMIT A PROXY, YOUR VOTE WILL BE LOST. Enclosed is a postage paid envelope addressed to Olympic Tower Condominium, 641 Fifth

Avenue, New York, New York 10022 (Att: Peter Lepolstat, Building Manager) which you should use for your return Proxy. In order to be counted, your Proxy must be received by mail at the offices of the Condominium no later than 12 o'clock, noon, on May 25, 1989, or delivered to a representative of the Condominium at the annual meeting.

Dated: New York, New York
April 14, 1989

Sincerely,

THE BOARD OF
MANAGERS OF OLYMPIC
TOWER CONDOMINIUM
RESIDENTIAL SECTION

APPENDIX C

APPENDIX C

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WESTERN UNION MAILGRAM
Karen de Kleinman Real Estate K De Kleinman
641 5 Avenue
New York NY 10022
This is a confirmation copy of the following message.

2123082058 TDMT New York NY 03-05-85

0309P EST

PMS Donald Kriendler, President, Board of Managers, Olympic Tower Condominium

RPT DLY MGM, DLR

641 5 Ave

New York NY 10022

This telegram will confirm my telephone call to your office this morning requesting a complete list of all Olympic Tower Condominium unit owners, their addresses and telephone numbers

"Time is of the Essence" as the annual meeting is approaching and I wish to communicate with all members immediately

In the event I do not receive this list by 10 A.M. Thursday morning, March 7, 1985 I shall refer this matter to my attorneys

Very truly yours

Karen de Kleinman

Olympic Tower Owner of Units 27F,

37B and 39E

641 5 Ave.

New York NY 10022

OLYMPIC TOWER

March 11, 1985

Ms. Karen de Kleinman
641 Fifth Avenue
New York, New York 10022

Dear Ms. de Kleinman:

I have received your telegram requesting the names and addresses of all of the unit owners at Olympic Tower.

I am surprised that you are not aware from your familiarity with the building that information as to the names and addresses of unit owners is confidential and may not be disclosed as a matter of policy.

Privacy and confidentiality of such information is important to our unit owners. Olympic Tower is a condominium and therefore no unit owner has an interest in the building as a whole, as distinguished from his own apartment. Accordingly, the information you request cannot be released except with respect to any particular unit owner who has expressly authorized its release to you in writing.

Very truly yours,

DKL:rl

Donald L. Kreindler
President

cc: Douglas Elliman-Gibbons & Ives
Att: William Sherry
Peter Gold

Residential Board Members:

Mr. T. Vincent Learson

Mr. John L. Grant

Mrs. Dorothy Craig

Mr. Emanuel Kampouris

Robinson, Silverman, Pearce
Aronsohn & Berman
230 Park Avenue
New York, NY 10169
(212) 687-0400

March 11, 1985

Mr. Donald Kriendler
President, Board of Managers
Olympic Tower Condominium
641 Fifth Avenue
New York, New York 10022

Dear Mr. Kriendler:

We are the attorneys for Karen de Kleinman who has forwarded to us a letter dated February 19, 1985 from you to all unit owners in Olympic Tower as

well as what purports to be a resolution adopted by the Board of Managers concerning nominating procedures (the "Resolution").

Please be advised that the Resolution, which appears to be directed at preventing Mrs. deKleinman from being elected to the Board of Managers, is a gross violation of her rights as a unit owner. The Resolution is also in blatant violation of the By-Laws of the Olympic Tower Condominium.

Unless we receive written notification from the Board of Managers in a form satisfactory to us that the Resolution has been rescinded, we have been instructed to take all appropriate legal action.

Very truly yours,

Mark Jon Sugarman

KREINDLER & RELKIN

A PROFESSIONAL CORPORATION

500 Fifth Avenue, New York, NY 1110-0267

(212) 719-1600

March 13, 1989

Mark Jon Sugarman, Esq.
Robinson, Silverman, Pearce,
Aronsohn & Berman
230 Park Avenue
New York, New York 10169

Dear Mr. Sugarman:

I am in receipt of your letters of March 11, 1985. I am also advised that you have written similar requests to Douglas Elliman-Gibbons & Ives and this letter responds to those as well.

With respect to Ms. de Kleinman's request for a list of the names and addresses of all unit owners, we have previously written to her by letter of March 11, 1985 as to why that information may not be disclosed. Since that letter was apparently not in your possession when you wrote your letter of March 11, an additional copy is herewith enclosed for your review.

With respect to your letter regarding the resolution of the Board concerning nominating procedures, we believe that said resolution is plainly within the power of the Board, and have been so advised by our counsel, Kurzman, Karelsen & Frank, Esqs. We have no idea of the basis for your statement that the resolution is "in blatant violation of the By-Laws". Nor do we understand how

the resolution is "a gross violation of (Ms. de Kleinman's rights) as a unit owner". If you care to advise us of the specific basis for these statements, we will review the matter further.

Similarly, as the resolution clearly indicates, it is not directed at her or any other individual, but rather constitutes, we believe, a reasonable exercise of the Board's powers to properly regulate the operations of the building.

Very truly yours,

DLK:rl

Donald R. Kreindler

Robinson, Silverman, Pearce,
Aronsohn & Berman
230 Park Avenue
New York, N.Y. 10169
(212) 687-0400

May 13, 1985

Ms. Karen deKleinman
Olympic Tower Condominium
641 Fifth Avenue
New York, New York 10022

Dear Ms. deKleinman:

You have asked us, as your attorneys, to express our views with regard to a certain resolution concerning "nominating procedures" passed by the Board of Managers,

Residential Section and distributed to all residential unit owners by cover letter dated February 19, 1985.

Pursuant to numbered paragraph 1 subsection B thereof, "persons who are associated with real estate brokerage firms representing persons selling, buying or renting apartments in the building" purportedly are not eligible for nomination and are therefore excluded from serving on the Board of Managers.

Article II, Section 1 of the "By-Laws of Olympic Tower Condominium" provides, in relevant part, that;

> Except for Managers elected by Sponsor, all other Managers shall be Unit Owners, or Mortgagees of Units or a Spouse of and individual mortgagee...

Thus, the By-Laws contain no exclusions by reason of association with real estate brokerage firms representing persons buying or selling apartments in the building.

Article XII, entitled "Amendments to By-Laws" provides that the By-Laws may be amended only by the "vote of 66 2/3% in number and in common interest of all Unit Owners at a meeting of Unit Owners duly held for such purpose...

By reason of the foregoing, it is our opinion that the Board of Managers exceeded its authority and violated the By-Laws by purporting to pass the aforedescribed Resolution. Moreover, it is also arguable that the action taken

is arbitrary, capricious and in violation of the rights of those unit owners who would be adversely affected thereby.

Very truly yours,

Mark Jon Sugarman

WESTERN UNION MAILGRAM

K DEKLEINMAN

OLYMPIC TOWER CONDOMINIUM 641

FIFTH AVENUE NEW YORK NY 10022

This is a confirmation copy of the following message:

2123082058 TDMT New York NY 137 05-07-85

1227P EST

PMS Donald Kreindler President

Olympic Tower Condominium RPT DLY MGM, DLR

641 Fifth Ave

New York NY 10022

Confirming my call to your office this morning, with regard to the petition to call a special meeting of the Olympic Tower Condominium unit owners at 2:00PM on May 14, 1985, which was duly served upon you at approximately 12:10AM May 3,

1985, I am anxious to know exactly when you plan to send the annōuncement and my proxies to all the unit owners.

You may reach me at 212-308-2058, I await your expeditious reply inasmuch as "Time is of the Essence" in the best interests of all the unit owners so that they will have ample time to make their plans to attend or to be represented by proxy.

Very truly yours,

Karen de Kleinman

CC: Donald Kreindler Esq. 500 Fifth Ave New York 10110

Mrs. Dorothy Craig Secretary

Olympic Tower Condominium

641 Fifth Ave

New York NY 10022

Karen de Kleinman
Olympic Tower, 641 Fifth Avenue,
Suite 24 B, New York, NY 10022

May 2, 1989

BY HAND

Mr. Donald L. Kreindler, President
Olympic Tower Condominium
641 Fifth Avenue
New York, New York 10022

Mrs. Dorothy Craig, Secretary
Olympic Tower Condominium
641 Fifth Avenue
New York, New York 10022

Dear Mr. Kreindler and Mrs. Craig:

Enclosed is the original petition (to Mrs. Craig, secretary) and a copy

thereof (to Mr. Kreindler), directing that the President of the Olympic Tower Condominium (the "Condominium") call a special meeting of the Unit Owners of the Condominium, pursuant to Article III, Section 3 of the By-Laws of the Condominium, on May 14, 1985, at 2:00 p.m. at the Dorset Hotel, Chippendale Room, located 30 West 54th Street in the Borough of Manhattan, City and State of New York. The Petition has been signed by Unit Owners representing in excess of 50% of the common interest in the Condominium.

For your convenience 225 copies of the Notice of the Special Meeting (the "Notice") are enclosed. An equal number of Proxy Forms designating Karen de Kleinman as proxy for Unit Owners (the "Proxy") are enclosed.

The Board of Managers has steadfastly refused to make available to me the names and addresses of Unit Owners, so that I could communicate with them about urgent matters relating to the Condominium. Moreover, the Board of Managers has reserved to itself the exclusive ability to communicate with all Unit Owners. Accordingly, in fairness to me and all Unit Owners, I request that you include the Proxies with the Notice.

Very truly yours,

Karen de Kleinman

cc: Mrs. Dorothy Craig
Secretary
1701 Douglas Avenue
Midland, Texas 79701

Law Offices
Kurzman Karelsen & Frank
230 Park Avenue
New York, N.Y. 10169
(212) 867-9500
Cable Address "Karelsen" New York

May 8, 1985

Ms. Karen de Kleinman
641 Fifth Avenue
New York, New York 10022

Re: Olympic Tower Condominium

Dear Ms. de Kleinman:

We are general counsel to the Board of Managers of Olympic Tower Condominium Residential Section. Your letter of May

2, 1985 to Mr. Donald Kreindler, President, and Mrs. Dorothy Craig, Secretary, was received by them on May 3rd, and has been referred to us for reply. The President has indicated to us a willingless to take up the issue of the removal of the entire Board, which you requested. The By-Laws, however, leave the choice of the time and place of a special meeting to the President of the Condominium. The time that you have suggested of 2:00 P.M. on May 14th, does not leave sufficient time to notify all the Unit Owners, many of whom live out of the country, since a mailing would not even reach many of them by May 14th, much less permit sufficient time for them to mail back a proxy or arrange to attend the meeting. Obviously, such an important issue should receive the consideration of a maximum number of Unit Owners.

The President has instructed us to advise you that the subject of removing the Board of Managers will be considered at the Annual Meeting when the largest representation of Unit Owners will be present.

Very truly yours,

Ernest L. Bial

ELB:RK

BY HAND

OLYMPIC TOWER CONDOMINIUM

641 Fifth Avenue

New York, New York 10022

May 8, 1985

To the Unit Owners:

A Ms. Karen de Kleinman has forwarded to us a petition to remove the entire Board of Managers. Attached is a copy of the letter from the general counsel of Olympic Tower Condominium in reply to her request.

The Condominium By-Laws provide that only the President of the Board can call a special meeting of unit owners. As you can see from the attached, this is an item that should be discussed at our

annual meeting on May 14th, at 5:00 p.m., at the Dorset Hotel. Any other meeting called for unit owners is invalid and any action taken at such a purported meeting would be null and void.

We urge your attendance at the annual meeting, since any attempted removal of the entire Board is obviously of critical importance to the unit owners and the future welfare of the building. If you have not previously signed your management proxy, it is extremely important that you do so immediately and return it. (proxy attached)

For your further information, financial statements prepared by Pannell, Kerr, Forster were mailed to all unit owners on January 15th.

BY ORDER OF THE PRESIDENT

OLYMPIC TOWER CONDOMINIUM

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
40 West 57th Street
New York, N.Y. 10019
(212) 977-9700

April 14, 1986

Frank E. Karelsen, III, Esq.
Kurzman, Karelsen & Frank
230 Park Avenue
New York, New York 10169

RE: Olympic Tower
Condominium

Dear Mr. Karelsen:

As you are aware, my client Karen de Kleinman has been nominated for election to the Board of Managers of the building. In anticipation of her being declared eligible to run, either by the Board or by Judge Wilk, and in order to insure a full and frank airing of the issues affecting the Condominium, my client and her accountants would like to examine all of the books, records and

other documents at the earliest, mutually-convenient date, with respect to the following subjects:

1. All records pertaining to the Health Club, including but not limited to, agreements, leases, notes, profit and loss statements, propositions, business plans, etc.; and

2. All records relating to the action instituted by the Condominium Residential Board of Managers against the sponsor for $6,000,000, including, but not limited to, all pleadings and other documentation evidencing the claims asserted, the supporting materials and the decision to settle.

I would appreciate it if you would raise these matters at the meeting of the Board of Managers which is

scheduled to be held tomorrow and give me your response sometime before the scheduled court appearance on Wednesday.

Thank you for your cooperation.

Sincerely,

Martin Stein

MS/mc

Tel. (212) 308-2058

Karen de Kleinman
Olympic Tower
641 Fifth Avenue, Suite 24-B
New York, N.Y. 10022

March 21, 1986

Mr. Irving Levitt, Chairman
Nominating Committee
Olympic Tower Condominium
641 Fifth Avenue, Unit 23-G
New York, New York 10022

BY HAND

Re: INTERVIEW WITH THE NOMINATING COMMITTEE

Dear Mr. Levitt:

This letter will confirm my willingness to meet with you and other members of the Nominating Committee, as per your request last evening.

As I indicated to you, in view of the pending litigation between the Board of Managers, of which you are a member, and myself, I have been advised by my attorneys, that any interviews held

should include their presence. Likewise your counsel would be welcome to attend.

In any event, my concerns for the building as well as my views with regard to the manner in which the Board of Managers has conducted its activities over the past few years are well known.

As you are aware, as stated by my counsel in correspondence dated March 17, 1986, we are awaiting the formal rescission of the Amendment precluding my participation as a Board member.

Very truly yours,

cc: Martin Stein, Esq.
Phillips, Nizer, Benjamin,
Krim & Ballon

LAW OFFICES
KURZMAN KARELSEN & FRANK
230 Park Avenue
New York, N.Y. 10169

April 24, 1986

BY HAND

Martin Stein, Esq.
Phillips, Nizer, Benjamin,
Krim & Ballon
40 West 57th Street
New York, New York 10019

Re: Karen de Kleinman
v. Olympic Tower
Condominium

Dear Mr. Stein:

As you know, Judge Wilk has refused to stay the Board of Managers from holding the annual meeting of unit owners and the election. The Board is planning to hold the annual meeting on June 12, 1986, at 5:00 p.m., at the Dorset Hotel in New York City.

Three nominations have been received by the Nominating Committee -- Ms. Karen

de Kleinman, Charles F. Niemeth, Esq. and Mr. Fred G. Peelen. In view of the pending motion before Judge Wilk and despite its being under no legal compulsion to do so, the Board of Managers has decided to permit Ms. de Kleinman to run for election to the Board.

The Board will submit a proxy and a proxy statement to the unit owners; the proxy statement will advise the unit owners of the names of the three nominees and will contain the Board's recommendation that the unit owners vote for Messrs. Niemeth and Peelen and not for Ms. de Kleinman. It will present the Board's reasons for its recommendation. The Board's recommendation will comprise approximately 500 words.

Biographical information about each of the candidates will be enclosed with

the proxy materials. In Ms. de Kleinman's case, unless you otherwise advise, the biography she submitted to the Nominating Committee will be sent. Further, the Board will give Ms. de Kleinman an opportunity to submit a statement to the unit owners; this statement will be included as part of the Proxy Statement.

The Board has agreed to have the notice of meeting and proxy material mailed by The Honest Ballot Association, which will also receive the proxies and conduct and certify the results of the election.

Accordingly, if Ms. de Kleinman submits a statement in support of her candidacy (such statement should consist of not more than 600 words), directly to The Honest Ballot Association at 1000 Northern Boulevard, Great Neck, New York 11021, attention, Maralin Falik,

Executive Director (such statement to be received by The Honest Ballot Association no later than May 2, 1986 at 4:00 p.m.), such statement will be typed in a space to be provided in the proxy statement to be mailed to all unit owners.

The proxy being solicited lists the names of all three nominees and will enable the unit owners to direct their vote as they see fit.

Kindly acknowledge receipt of this letter on the copy provided for that purpose and return same to our messenger.

Sincerely yours,

SEM:RK

Stanley E. Margolies

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
40 West 57th Street
New York, N.Y. 10019
(212) 977-9700

May 12, 1986

Stanley Margolies, Esq.
Kurzman, Karelsen & Frank
230 Park Avenue
New York, New York 10169

RE: Karen de Kleinman

Dear Mr. Margolies:

Thank you for your letter of May 9th. I would like to make the following points in connection with the letter and the forthcoming meeting:

1. While it is true that any Board member may, in his personal capacity, contact any unit owner, the current Board members have the names and addresses of the unit owners while my client does not. This obviously puts my client at an unfair disadvantage in

connection with additional proxy solicitations. Accordingly, I would like to request, once again, a copy of the mailing list, so that all candidates can truly be on an equal footing.

2. In connection with your agreement not to have last year's proxies destroyed, I would also appreciate it if you would preserve the affidavit stating that copies of last year's notice of the Annual Meeting were sent by Certified Mail to all unit owners, and copies of the signed receipts themselves. As you may recall, the existence of such an affidavit was announced at last year's Annual Meeting.

3. As was the case last year, my client intends to have a Court Reporter present to transcribe the proceedings at this year's Annual Meeting.

4. I was not informed of

the change of the date from the 11th to the 17th, but I certainly accept your statement that your failure to so advise me, was inadvertent.

Sincerely,

Martin Stein

MS/mc

BY HAND DELIVERY

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON
40 West 57th Street
New York, N.Y. 10019
(212) 977-9700

May 20, 1986

Stanley Margolies, Esq.
Kurzman, Karelsen & Frank
230 Park Avenue
New York, New York 10169

RE: Olympic Tower - Notice of Annual Meeting

Dear Mr. Margolies:

I have recently received a copy of the Notice of Annual Meeting and proxy solicitation material sent to all unit owners by the Honest Ballot Association. My review of this material prompts certain questions and serious objections with respect to the procedure being employed in the conduct of this election. I would therefore, suggest an immediate meeting between the two of us and an appropriate representative of the Honest Ballot Association in the hope

that the matters listed below may be resolved sufficiently in advance of the Annual Meeting.

1. There was only one proxy sent to each unit owner listing two members of the Board and a member of the Nominating Committee (selected by the Board), as the proxies. Thus, even someone who does not support the Board and agrees with all of my client's positions on all issues, has no alternative but to give incumbent management total discretion "to transact such other business as may properly come before the meeting". The unfairness of this procedure is compounded by the fact that the Board is still unwilling to provide my client with a mailing list of unit owners so that she may solicit proxies on her own behalf.

2. The proxy itself sets forth the recommendation of the Board,

both for Messrs. Niemeth and Peelen and against Karen de Kleinman. This again, is unfair. Any recommendations should have been limited to the general statement regarding the candidates.

3. The proxy states that it will be voted for Messrs. Niemeth and Peelen, unless instructions to the contrary are given. In view of the fact that this is a hotly-contested election, this too is unfair and favors management.

4. I would like to discuss a method of verifying the genuineness of the signatures on proxys, as well as the authority of anyone signing on behalf of another, or corporate entity to do so. I have raised this issue on several occasions, but thus far, my requests have been ignored.

5. The proxy material contains a lengthy discussion prepared

by management defending a controversial proposal for the Health Club. As you are aware, this matter is of considerable interest both to my client and other unit owners. Unit owners who do not agree with the Board's proposal and who have different views and alternative suggestions cannot be heard. The Board's continued unwillingness to provide a mailing list ensures that the censorship of opposing views will continue.

I look forward to hearing from you as soon as possible.

Sincerely,

Martin Stein

MS/mc

cc: Mr. Murray Schwartz
Honest Ballot Association
1000 Northern Boulevard
Great Neck, New York 11021

BY HAND DELIVERY

APPENDIX D

APPENDIX D

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ANNUAL MEETING
BOARD OF MANAGERS
OLYMPIC TOWER CONDOMINIUM

Wednesday, May 14, 1985
Hotel Dorset
New York, New York
Commencing at 5:15 p.m.

B E F O R E:

BOARD OF MANAGERS

DONALD L. KREINDLER, President
DOROTHY CRAIG
T. VINCENT LEARSON
JOHN L. GRANT
IRVING LEVITT

A P P E A R A N C E S:

HAYTHE & CURLEY, ESQS.
BY: LEONARD S. BAUM, ESQ.
Attorneys for Karen de Kleinman, Jorge Carnicero, David Helpern, Joseph Morningstar and Fred Peelen, in their capacity as unit owners of Olympic Towers

KURZMAN, KARELSEN & FRANK, ESQS.
BY: FRANK E. KARELSEN, III, ESQ.
- and -
ERNEST L. BIAL, ESQ.
Attorneys for Residential Board of Managers of Olympic Tower

Sandra Krietzberg
Certified Shorthand
Reporter

Excerpts from 1985 Annual Meeting

(Transcript pgs. 29-34)

Mr. Baum: My name is Leonard S. Baum. And I am an attorney that is representing five unit owners who are seeking election to the Board.

A good deal of material has been exchanged with Mr. Kreindler and we have informed him that the procedure which Mrs. Craig has described is most inappropriate. It's illegal. It was a unilateral amendment of the By-laws which in essence disenfranchised many of the unit holders sitting in this room today.

And I rise at this moment to indicate that we do not subscribe to the nomination procedure which has been described to you at some length. Unfortunately, the unit holders who have been aggrieved had only two choices:

One was to engage in very costly bitter and public litigation to challenge this procedure, which they elected not to do, not only because of the cost, but to protect the confidentiality of the relationships in this building. And, secondly, they felt that the most effective way to deal with the matter was to request a special meeting of the unit holders, which request was presented by way of a petition signed by more than 51 percent of the unit holders in Olympic Tower. It was given to Mr. Kreindler on May 2nd.

Unfortunately, he decided not to circulate the petition or the request or a solicitation of proxies. Unfortunately, also, since March when he was first asked by a group of people for the names of the unit holders, so that group could contact them in great

confidence, that request was rejected. It was rejected by him and by the counsel repeatedly and, therefore, the people who would like to present themselves to you today for election were prevented from learning your identities and communicating with you.

Consequently, after the request for names was denied repeatedly since March, after a duly signed petition by 51 percent of the unit holders was presented to the president and he absolutely refused to send that to you, claiming that there was insufficient time on May 2nd and May 3rd, he nevertheless on May 8th circulated another request for proxies. We were prevented from communicating with you in any way. And, finally, as a last resort there was an attempt to reach the unit holders by putting material in

mailboxes. Unfortunately, once again, even after this went into your private mailbox, upon the direction of the Board of Managers, that material was removed and you never had an opportunity to see it.

And so it was only after all of these attempts to communicate with you previously to describe grievances, including the nomination procedure, that communications were posted or slipped under doors. And I'm sorry that Mr. Kreindler hadn't mentioned that to you when he discussed how people were learning about differences that arose.

In any event, as many of you know, an attempt was made to call a special meeting. That was not possible. We were assured, and I'm glad Mr. Kreindler has reassured us that the subject would be taken up in today's

meeting. However, one of the first things that we would like to propose, and we've waited to hear the report of the president, which I suppose was a little bit of an election speech, as well, mixed in, many of us have been waiting to discuss with you the reasons why we believe this procedure should not be followed by the Board.

Very simply, the By-laws specifically provide that any unit holder is permitted to serve as a manager and there is no other provision whatsoever. And I'm sure that Mr. Kreindler, as an attorney, knows the interest of a private corporation director stepping aside when the matter concerning conflict of interest is discussed. There is a board of nine managers, at least five in the residential area, so the conflict of

interest will not appear to apply. It does appear to a number of unit holders that, to put it quite simply, these special regulations were simply put into place after a significant challenge was mounted to the existing Board managers last year for the specific purpose of disenfranchising at least one if not more unit holders.

And it is the position of a group of people who come before you today whose names and credentials I would like to discuss at the appropriate time, that you are mature enough and that we live in a democratic enough system so that you may hear their names, hear their credentials, their criticisms of the existing Board managers, hear more importantly their constructive criticisms in terms of what they would like to see for purposes of improvement

of the building, and that you would be adult and sufficiently protected to make your own decisions without an ad hoc committee of the Board prescreening those who are permitted to serve you.

I think I've spoken to the nomination point and I have asked in the past that you, in the interest of what I would call corporate democracy, give the people, the unit holders seated at this meeting the opportunity to make nominations from the floor and present their position to all of the unit holders.

I ask you, Mr. Kreindler, for the Board to waive the regulation which you have adopted. I do submit to you that it is illegal, that it is a de facto amendment of the Bylaws which requires a 66 percent vote of all of the unit holders, and failing the Board's

willing waiver of that rule so that everybody has an opportunity to be heard, we would make a formal motion that that procedure not be followed here today.

Thank you.

MR. KREINDLER: Well, you're correct in saying that I did say it would be taken up at this meeting. In fact, it's item nine on the agenda.

Supreme Court, U.S.
FILED
JAN 16 1990
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 89-937

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

KAREN DE KLEINMAN,

Petitioner,

VS.

THE RESIDENTIAL BOARD OF MANAGERS OF THE OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,

Respondents.

ON WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

BRIEF FOR RESPONDENTS

*FRANK E. KARELSEN, III
KURZMAN KARELSEN & FRANK
230 Park Avenue
New York, New York 10169
(212) 867-9500

**Counsel of Record*

QUESTIONS PRESENTED

I. Whether the Court has jurisdiction under 28 U.S.C. §1257(3) to review an alleged constitutional claim not raised in the State trial or intermediate appellate courts, and not properly presented to or addressed by the State's highest court.

II. Whether the denial by a State's highest court of leave to appeal from the intermediate appellate court's dismissal of an appeal for untimeliness presents a federal question under 28 U.S.C. 1257(3).

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The Respondents respectfully request that this Court deny the petition for a writ of certiorari to the New York Court of Appeals.

STATEMENT OF THE CASE

This case arose under state law, and involved the sale to petitioner of a condominium unit in violation of the condominium's by-laws and without the condominium Board's having first waived its right of first refusal. The Supreme Court, New York County, granted the condominium's motion for summary judgment voiding the sale and dismissing petitioner's counterclaims (Pet. App. A. 18-25, 28-33). At no stage of the proceedings before the court of first instance did petitioner raise a Federal (or State) Constitutional claim.

Petitioner filed a notice of appeal, dated December 7, 1987 (Pet. App.A.34), but did not perfect the

appeal to the Appellate Division, First Department within the nine month period prescribed by that court's rules of practice.[1]

In January, 1989, petitioner moved to enlarge her time to perfect the appeal, arguing that various personal reasons prevented her from timely proceeding. Petitioner raised no Constitutional claim, and did not assert that she was unaware of the time requirements. The Appellate Division, First Department, denied Petitioner's motion, and granted the Respondents' cross-motion to dismiss the appeal. (Pet. App. A. 12-14).

---

1 22 NYCRR § 600.11(a)(3) provides, in pertinent part:

> "The clerk will place no civil appeal or cause on the calendar where the necessary papers and briefs are not offered for filing within nine months of the date of the notice of appeal from the judgment or order appealed from..., unless the time for filing has been enlarged by order of the court.

Petitioner then sought leave to appeal (Pet. App. A. 9-11)[2]; on July 6, 1989, the motion was dismissed on jurisdictional grounds, and otherwise denied, by the New York Court of Appeals (Pet. App. A. 7-8). Petitioner's moving papers had reiterated the arguments made to the Appellate Division. Although not permitted by the Court of Appeals,[3] petitioner also submitted reply papers, which are included as Appendix B to the petition.

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2 Petitioner's notice of motion actually sought an order of the Court of Appeals granting an enlargement of time within which to perfect the appeal to the Appellate Division (Pet. App. A. 9-11). New York has no statutory or procedural basis for such motion or order, and the Court of Appeals treated the motion as one for leave to appeal to the Court of Appeals. The petition, however, seeks certiorari "to the New York Court of Appeals to permit an extension and enlargement of petitioner's time to file and perfect her appeal" (Pet. 10), rather than to review the denial of leave to appeal.

3 "Reply briefs or memoranda are not permitted by the court's motion practice" 22 NYCRR § 500.11(c).

Petitioner then sought reargument of her motion for leave for appeal (Pet. App. A. 4-6). It was at this stage of the proceedings that petitioner first claimed, in her moving papers, that respondents had violated her Constitutional rights (Pet. 19).[4] The Court of Appeals denied the motion, without explanation and without mention of petitioner's purported Constitutional claims. (Pet. App. A.1).

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4 A motion for reargument to the Court of Appeals

> "may not be based on the assertion for the first time of new points except for extraordinary and compelling reasons." 22 NYCRR §500.11(g)

Petitioner also claimed, for the first time on the motion for reargument, that her prior attorneys failed to advise her of the time limit for perfecting the appeal.

REASONS FOR DENYING THE PETITION

1. The Constitutional Violations Claimed In The Petition Were Neither Properly Presented To Nor Ruled Upon By The State Courts.

Petitioner attempts to invoke the Court's jurisdiction under 28 U.S.C. §1257(3) (Pet. 5-6) by asserting that respondents violated her constitutinoal rights by denying her freedom of speech and expression' (Pet. ii) and refusing to waive the right of first refusal (Pet. ii-iii), and that the failure by the court of first instance to consider these Constitutional violations constituted 'judicial enforcement of private discrimination' in violation of the Fourteenth Amendment (Pet. 19-20).[5]

Even if the arguments in the petition are construed to assert claims arising under the Constitution, they

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5 The court's failure to consider the arguments resulted from their not having been raised, negating any claimed Constitutional violation, Fourteenth Amendment or otherwise.

were not adequately "set up or claimed," or decided, in the State court system in order to confer jurisdiction under 28 U.S.C. 1257(3). E.g. Webb v. Webb, 451 U.S. 493 (1981).

Petitioner concedes that the questions sought to be reviewed were first raised in her motion for reargument to the Court of Appeals (Pet. 19). See Supreme Court Rule 21.1(h). She cannot show that the Court of Appeals' summary denial of reargument was not based on a determination of the Constitutional claims rather than independent State grounds, including petitioner's failure to raise the constitutional claims in the lower courts. Chicago I.& L.R. Co. v. McGuire, 196 U.S. 128 (1904); See, Ellis v. Dixon, 349 U.S. 458, reh. denied 350 U.S. 855 (1955).

2. The Dismissal Of Petitioner's Appeal For Untimeliness Presents No Federal Question For This Court To Review.

The Supreme Court's "only power over state court judgments is to correct them to the extent that they incorrectly adjudged federal rights" Fay v. Noia, 372 U.S. 391, 430 n.40 (1963), quoting Herb v. Pitcairn, 324 U.S. 117, 125, 126 (1945).

No federal rights were adjudged by the Appellate Division's dismissal of petitioner's appeal and denial of her motion to enlarge the proscribed time limit, or by the Court of Appeals' denial of leave to appeal.[6]

---

6 Petitioner does not claim that the Appellate Division's nine month limitation does not serve a "legitimate state interest" or was applied to prevent a determination of petitioner's then unasserted Constitutional claims. See, Henry v. Mississippi, 379 U.S. 443, 447 448, reh. denied 380 U.S. 926 (1965).

Petitioner's arguments do not convert a state procedural issue into a federal question. Her claim that the Court of Appeals misapplied the doctrine of finality when dismissing her motion for leave to appeal (Pet.(i), 21-31) is, at best, academic, as the court's order also "otherwise denied" the motion (Pet. App.A.7-8). Nor is there any substance to her claim, first made on the reargument motion, that she was deprived of due process by her attorney's failure to advise her of the Appellate Division's time limitations (Pet. iv-v), or by her personal reasons for not timely perfecting the appeal (Pet. v-vi).

3. No Special Or Important Reasons Exist To Warrant The Grant Of Certiorari.

Even if this Court had jurisdiction and petitioner had presented a federal question, the Petition raises no question of substance or public

importance to warrant review. Supreme Court Rule 17; Rice v. Sioux City Cemetery, 349 U.S. 70, 73-75 (1955) (on rehearing).

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANK E. KARELSEN, III
KURZMAN KARELSEN & FRANK
Counsel for Respondents
230 Park Avenue
New York, New York 10169
(212) 867-9500

/165.

Supreme Court, U.S.
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FEB 6 1990
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CLERK

No. 89-937

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OCTOBER TERM, 1989

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

KAREN DE KLEINMAN
Petitioner, pro se
641 Fifth Avenue
New York, New York 10022
(212) 308-2058

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STATEMENT OF FACTS

The Petitioner respectfully submits the within brief in reply to several misstatements of fact and law contained in Respondent's arguments.

At the outset, and contrary to Respondent's inaccurate contention, this case did not arise out of state law of New York, but rather pursuant to violations of the 1st, 5th and 14th Amendments of the Federal Constitution and under fundamental common-law protection involving traditional rights of private property.

It should be noted that these violations were described not only in Petitioner's lower courts' proceedings but also, initially, in her Amended Answer and Counterclaims (annexed hereto and made a part hereof in App. A.1), in paragraphs 15-21 and 23-26 of her

counterclaim allegations, and form the basis of Petitioner's contentions herein.

Specifically, these violations were further delineated by Petitioner in her Motion for Reargument's moving affidavit in the lower court (annexed hereto and made a part hereof in App. A.11).

Significantly, and not to be overlooked, is the fact that while the subject litigation was first initiated by Respondent, the Petitioner, in seeking to enforce her Constitutional rights, under the 1st, 5th and 14th Amendments, commenced and was successful in two other related actions in the Supreme Court (N.Y. County), bearing Index #10516/86[1] and #7081/86[2]. Copies of Judge Wilk's determinations are annexed hereto and

---

[1],[2]Noticed in the NY Law Journal simultaneously with Index #8147/86 (the within controversy), on Nov. 19, 1987, on p. 13, col. 1.

made a part hereof in App. A.28,35.

Clearly, Respondent's factual constitutional violations were invoked by the Petitioner with the initiation of the subject litigation and were likewise directly involved in the above undisputedly related litigations, **between the same parties, the same attorneys and simultaneously heard before the same Judge**. Not only were Petitioner's constitutional issues properly raised and ruled upon by the State Courts, but pointedly, even the Court of Appeals on reargument ruled upon Petitioner's constitutional contentions.

Significantly the facts, circumstances and import of Petitioner's original existing pleadings, as well as the contents of her subsequent motions, affidavits, etc., all dealing with the same interference and frustration, caused by the Respondent in connection with her

property rights, and obviously the litigation of the two related cases, supra, as well as the constitutional basis for same, have conveniently escaped Respondent and its two law firms.

In this connection, it should be noted that the prevailing law relating to Petitioner's constitutional right to obtain vindication and restoration of her property rights is summed up in Corpus Juris Secundum, Volume 16A, Sections 506 and 507, (annexed hereto and made a part hereof in App. C.1-8):

> "The right of private property is a fundamental, sacred, natural, inherent, and inalienable right, the protection of which is one of the most important purposes of government. It is a common-law right, which existed before the adoption of the federal and state constitutions, and is not now

dependent on them for its existence. However, to insure their continuance, property interests are guaranteed by the federal and by the various state constitutions."

(emphasis & underscore supplied)

In Lynch v. Household Finance Corporation, et al., 405 U.S. 538, this Court, in referring to the right to enjoy property as a personal right, stated the principle as follows:

"[7,8] Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel is in truth a "personal" right, whether the "property" in question be a welfare check, a home,

> or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized."
>
> (emphasis & underscore supplied)

Respondent's argument that Petitioner never previously invoked her contention that she was completely unaware of the "9-month" limitation in perfecting her appeal, is patently inaccurate, inasmuch as her lack of knowledge was due to her attorneys' gross failure in advising her that such limitation was contained in the rules of the Appellate Division; nor did they advise Petitioner of the extension and enlargement application availability. Petitioner specifically refers to these

failures in both her Reply Affidavit[3] and Reargument papers[4] submitted in support of her motion for leave to appeal in the Court of Appeals.

Another inaccuracy is Respondent's argument on page 3 of its brief, that the Petitioner has erroneously mislabeled her request for relief in her notice of motion in the lower court. Clearly the Petitioner has invoked a savings clause in her notice by requesting:

> "and for such other and different relief as may be deemed just and proper in the premises."

New York procedural practice and case law has traditionally included "different relief as may be just in the premises."

Equally unsubstantiated is Respondent's reference to §500.11(c) of

---

[3]See, Petition/App. B.1-78.

[4]See, App. A.11-27 herein

the rules of the lower court relating to reply briefs on motions. Certainly Respondent's law firms are knowledgeable of the practice herein, and likewise know that reply briefs are accepted by the Court, if blatantly inaccurate arguments are interposed. The very fact that the lower court accepted Petitioner's reply papers - and same are part of the record - reflects on the hollowness of Respondent's contentions.

REPLYING TO RESPONDENT'S POINT 1

In refusing to discuss the other points interposed by the Petitioner, Respondent indicates that it is relying in substance solely on the contention that the Constitutional violations were neither properly presented nor ruled upon by the state courts.

It has been previously demonstrated herein that the Respondent has completely ignored the pleadings and the nature of

the within subject litigation. **Petitioner's counterclaims, asserted from the inception of this litigation in her Amended Answer, are based on Federal violations.** Equally important, are the Constitutional arguments advanced by the Petitioner, but ignored by the Respondent, not only in her papers submitted in the Supreme Court (N.Y. County), but also in her appellate papers.

There, it was clearly delineated and extensively discussed that the basis of this litigation with the Respondent was its brazen violation of her personal, human, property and civil rights - let alone, the substance of her litigation (Index #'s 10516/86 and 7081/86, supra). This consortium of Constitutional violations by the Respondent, in those papers, as well as in her discussions in the Court of Appeals clearly reflects her

claims, that she properly and timely presented the Respondent's violation of her Constitutional rights and that those courts ruled on her contentions.

In New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, this Court in delineating the basis upon which a writ of certiorari is granted stated the rule:

> "There are various ways in which the validity of a state statute may be drawn in question on the ground that it is repugnant to the Constitution of the United States. **No particular form or words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the**

claim is to be regarded as having been adequately presented."

(emphasis & undersore supplied)

See also, Eddings v. Oklahoma, 455 U.S. 104. Taylor v. Kentucky, 436 U.S. 478.

This court further said in Lovell v. City of Griffin, 303 U.S. 444, per Justice Holmes:

"When as here there is a plain assertion of federal rights in the lower courts, legal rules as to how far it shall be reviewed on appeal do no necessarily prevail. *** Whether the right was denied or not given due recognition by the [state court] *** is a question as to which the plaintiffs are entitled to invoke our Judgment."

(emphasis & underscore supplied)

Merely because a court does not specifically mention the basis of its rulings on Constitutional issues, does

not necessarily mean that it failed to rule upon them. Significantly, in Petitioner's application for reargument in the lower court, her main thrust therein was Respondent's violations of her specific Constitutional rights (See, App. A.19-27). Thus, the lower court in denying her application, obviously ruled upon her request. Therefore, Respondent's argument herein is not only inaccurate and misleading, but is patently absurd.

In Street v. New York, 394 U.S. 576, 583, this Court, in granting a writ in a case where the lower state court has failed in its decision to mention the questions before it, laid down the principle as follows:

> "The failure by the lower court to articulate its reasons for its denial of Petitioner's application for leave to appeal is a sound basis

for the granting of a writ of certiorari." (Underscoring supplied)

Again in Columbia Water Power Company v. Columbia Electric Street Railway Light and Power Company, 172 U.S. 475, 488, this Court in issuing a writ of error stated the rule:

"But where the validity of a treaty or statute of the United States is raised, and the decision is against it, or the validity of a state statute is drawn in question, and the decision is in favor of its validity, this court has repeatedly held that, if the Federal question appears in the record and was decided, or such decision was necessarily involved in the case, and the case could not have been determined without deciding such question, the fact that it was not

specially set up and claimed is not conclusive against a review of such question here. (Emphasis & underscore supplied)

REPLYING TO RESPONDENT'S POINT 2

The Respondent erroneously refers to the dismissal of Petitioner's appeal for untimeliness and presenting no federal questions for the Court. It would appear that Respondent has failed to read Petitioner's brief. At bar, the Petitioner, for all of the appellate litigation herein has proceeded "pro se". Obviously, lack of proper counsel and representation was a denial of her constitutional rights. Additionally, Petitioner did not receive "due process" when she had no attorney representing her: it is to say, as if her previous attorney had died. These violations of her Constitutional rights do not seem to impress Respondent's attorneys.

The "due process" clause of the Constitution guarantees a litigant the assistance of counsel regardless of the circumstances.

In Gibbs v. Burke , 337 U.S. 773, it appeared that the defendant had failed to request counsel and he had appeared as his own attorney. In granting a writ of certiorari, this Court said:

> "Since it is clear that a failure to request counsel does not constitute a waiver when the defendant does not know of his right to counsel, we proceed to the merits." The Court further said:
>
> "*** Petitioner was handicapped by lack of counsel to such an extent that his Constitutional rights to a fair trial was denied." (per Judge Brennan) (emphasis and underscoring supplied)

Obviously, in proceeding without

counsel in all of the appellate litigation, petitioner is incapable of professionally protecting her position and her Constitutional rights. See, Tomkins v. State of Missouri, 323 U.S. 485; Price v. Johnston, 334 U.S. 266; Holiday v. Johnston, 313 U.S. 342.

Significantly, no comment has been heard from Respondent's battery of at least 7 lawyers and two law firms, regarding Petitioner's inability to retain counsel because of lack of funds and her present predicament requiring her to act "pro se". This confrontation reminds one of the famous struggle between David and Goliath!

Addressing Respondent's allegation that Petitioner's arguments do not convert a state procedural issue into a federal question, this Court in Henry v. State of Mississippi, 379 U.S. 443, stated the rule:

"****** Accordingly, we have consistently held that the question of when and how defaults in compliance with states' procedural rules can preclude our consideration of a federal question is itself a Federal question." (emphasis and underscoring supplied)

REPLYING TO RESPONDENT'S POINT 3

Quite to the contrary of Respondent's contention, the within subject deals with a problem that has tremendous "national public importance," affecting every condominium unit owner - one out of every 16 Americans- according to statistics in CAI's[5] "FACTBOOK" (excerpts of which are annexed hereto and made a part hereof in Petitioner's "Brandeis Brief", App. B.24.

So controversial has this type of

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[5]Community Associations Institute

litigation become, that remedial legislation has been proposed by the New York State Legislature, in the form of "A Cooperative and Condominium Unit Owner's BILL OF RIGHTS[6], (text and related Our Town[7] news articles are annexed hereto and made a part hereof in App. B.1-23.

In Moore's Federal Practice, Vol. 13, 817.41, it is aptly stated:

> "The importance of an issue is not necessarily measured by its impact on the litigants, but its contribution to the developments of national law." (Emphasis supplied)

Despite all of the facts and statistics, Respondent's attorneys have the "chutzpa" to claim that the Petition raises no issues of substance or public importance to warrant review.

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[6]Senate Bill #4743/Assembly Bill #3518

[7]N.Y.C. Community Newspaper

CONCLUSION

A ruling on this case, offers this Court an opportunity to benefit the general public in its attempt to solve many problems raised by condominium ownership.

Clearly, a decision on the issues involved herein will determine not only this controversy between the parties, but will also set a precedent and clear message to all Board members serving in similar capacities that:

a) all unit owners' First, Fifth and Fourteenth Amendment and property rights, must be respected and are protected under the Constitution;

b) all Boards' actions must be taken in "good faith" and without arbitrary and capricious discrimination[8]; and

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[8]Condominium & Cooperatives App.B.39

c) all Boards' actions must be within a standard of reasonableness.

Last, but not least, the issuance of a writ of certiorari would serve "**JUSTICE**" by reaffirming the fundamental principles of "**fair play**" and "**freedom**" which permeate our constitution and judicial ideology.

Petitioner respectfully asks this Court for compassion and understanding in reviewing the lower court's abuse of discretion and violation of her Constitutional rights and fervently prays that a writ of certiorari be granted.

Respectfully submitted,

KAREN de KLEINMAN
Petitioner, pro se
641 Fifth Avenue
New York, New York 10022
(212) 308-2058

Dated: February 5, 1990

APPENDIX A PAGES

I. AMENDED ANSWER AND COUNTER-CLAIMS/The Residential Board of Managers v. Karen de Kleinman/ Index #8147 — 1,9,A.1-10

II. N.Y. COURT OF APPEALS MOTION AND SUPPORTING AFFIDAVIT FOR REARGUMENT — 2,7,12,A.11-27

III. JUDGE WILK'S (Supreme Court, N.Y. County) DECISIONS, ORDERS AND JUDGMENTS

A. de Kleinman v. The Residential Board of Managers/Index #10516/86 — 2,9,A.28-34

B. de Kleinman v. The Residential Board of Managers/Index #7081/86 — 2,9,A.35-44

SUPREME COURT OF THE
STATE OF NEW YORK
COUNTY OF NEW YORK

THE RESIDENTIAL BOARD MANAGERS OF OLYMPIC TOWER CONDOMINIUM, Plaintiffs, - against - AI INTERNATIONAL CORP. and KAREN de KLEINMAN, Defendants.	Index No. 8147/86
KAREN de KLEINMAN, Counter-Claim Plaintiff, - against - THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT, Counter-Claim Defendants.	AMENDED ANSWER AND COUNTERCLAIM

Defendant, Karen de Kleinman, by her attorneys, Phillips Nizer, Benjamin, Krim & Ballon, for her amended answer to the Complaint, alleges:

1. Admits the allegations in Paragraph 1 of the Complaint;

2. Admits, upon information and belief, the allegations contained in Paragraph 2.

3. Denies information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3.

4. Admits the allegations contained in Paragraphs 4 and 5;

5. Denies each and every allegation contained in Paragraphs 6, 7, 8 and 9, except admits that there are by-laws in the condominium and respectfully refers the Court to those by-laws for a true and correct statement as to the contents thereof;

6. Admits the allegations contained in Paragraph 10;

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11;

8. Denies each and every allegation contained in Paragraph 13, 14, 15 and 16, except admits that she refused to provide certain information arbitrarily requested by the Board;

9. Admits the allegations contained in Paragraph 17;

10. Denies each and every allegation contained in Paragraphs 18, 20 and 21;

11. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19.

AS AND FOR A FIRST

AFFIRMATIVE DEFENSE

12. Plaintiff has waived the right of first refusal.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

13. Plaintiff, under its own by-laws, is obligated to provide defendants with a waiver of the right of first refusal. Its refusal to do so was not only a violation of the by-laws, but was arbitrary and capricious and done for the sole purpose of harassing the defendant, Karen de Kleinman.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

14. The right of first refusal violates the New York rule against perpetuities.

AS AND FOR A FIRST
COUNTERCLAIM

15. The individual counterclaim defendants are members of the Board of Managers of Olympic Tower Condominium.

16. The counterclaim defendants were aware that the defendants had entered into an agreement for the purchase and sale of Unit 26-A, with title to close on or about August 7, 1985.

17. The counterclaim defendants were also aware that, based on the by-laws, the contract and general real estate practice in New York City, a written waiver of the right of first refusal signed by it was necessary in order for defendant, AI International Corp. to convey marketable title to defendant Karen de Kleinman, because in

the absence of such written waiver (a) defendant AI International Corp. could not take the risk of closing; and (b), no title company would insure title.

18. The counterclaim defendants intentionally and with the purpose of preventing defendant Karen de Kleinman from purchasing the unit in question, arbitrarily and capriciously refused to provide a written waiver of the right of first refusal despite the fact that it had no intention of exercising that right and despite the fact that it had no basis for questioning the ability of Karen de Kleinman to carry the unit financially.

19. As a result of the counterclaim defendants' refusal to provide the written waiver of the right of first refusal, defendant Karen de Kleinman was unable to proceed to closing on the date specified in the contract or

for a reasonable time thereafter.

20. By reason of the foregoing, defendant Karen de Kleinman was compelled to make additional payments to defendant AI International Corp., to the title company and to others, in order to finally close in November, 1985.

21. By reason of the foregoing, defendant Karen de Kleinman has been unable to lease Unit 26-A and has suffered the loss of the fair market rental of that unit.

22. Defendant Karen de Kleinman has been damaged in an amount not as yet ascertained, but at least in the sum of $250,000.

AS AND FOR A SECOND
COUNTERCLAIM

23. Defendant Karen de Kleinman repeats and realleges each and

every allegation set forth in Paragraphs 15 through 19, with the same force and effect as if fully set forth herein.

24. The foregoing conduct by counterclaim defendants is part of a continuous and long-term pattern of intentional harassment and intentional infliction of emotional distress by the counterclaim defendants upon defendant.

25. This conduct has resulted in the inability of defendant Karen de Kleinman to engage in her profession and realize income to the extent she had previously, with the result that she has suffered actual monetary damages, as well as severe emotional anxiety and distress.

26. By reason of the foregoing, defendant Karen de Kleinman has suffered damages in an amount not as yet ascertained, but at least in the sum of $5,000,000.

WHEREFORE, defendant Karen de

Kleinman demands judgment as follows:

(a) the dismissal of the Complaint;

(b) an award of $250,000 for the First Counterclaim;

(c) an award of $5,000,000 for the Second Counterclaim; and

(d) the costs and disbursements of this action.

Dated: New York, New York
February 25, 1986

Yours, etc.

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON
40 West 57th Street
New York, New York 10019
(212) 977-9700

Attorneys for Defendant
Karen de Kleinman

TO:

KURZMAN, KARELSEN & FRANK
230 Park Avenue
New York, New York 10169

Attorneys for Plaintiff

MILBANK, TWEED, HADLEY &
McCLOY
One Chase Manhattan Plaza
New York, New York 10005

Attorneys for Defendant
AI International Corp.

COURT OF APPEALS OF
THE STATE OF NEW YORK

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,	
Plaintiffs-Respondent,	Index No. 8147/86
- against -	NOTICE OF MOTION
AI INTERNATIONAL CORP.	
Defendant,	
and	
KAREN de KLEINMAN,	
Defendant-Appellant.	
KAREN de KLEINMAN,	
Counterclaim Defendant-Appellant,	
- against -	
THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,	
Counter-Claim Defendants-Respondents:	

PLEASE TAKE NOTICE that upon

the annexed affidavit of Karen de Kleinman, sworn to this 4th day of August, 1989, the undersigned will move this Court, at a Stated Term for Motions to be held at the Court House at the Court of Appeals Hall, Albany, New York, on the 21st day of August, 1989, at 10:00 a.m. in the forenoon, or as soon thereafter as counsel can be heard, for an order permitting the reargument of her previous motion for leave to appeal to the within Court, from the Order made by the lower court denying Appellant's application to enlarge her time to perfect the subject appeal from the Order made by Mr. Justice Wilk, dated November 12, 1987, in the Supreme Court, New York County, granting Plaintiff's application for summary judgment, and upon such reargument, granting Appellant's application to enlarge her time to perfect the subject appeal, on the ground

that the Court overlooked certain controlling principles of law and undisputed facts in arriving at its decision, and for such other and further relief as may be deemed proper in the premises.

Dated: August 4, 1989
New York, New York

Yours, etc.

KAREN de KLEINMAN
Defendant-Appellant,
pro se
641 Fifth Avenue
New York, New York 10022
(212) 308-2058

TO: KURZMAN, KARELSEN & FRANK
Attorneys for Plaintiff-Respondent
230 Park Avenue
New York, New York 10169
(212) 867-9500

COURT OF APPEALS OF
THE STATE OF NEW YORK

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, Plaintiffs-Respondent, - against - AI INTERNATIONAL CORP. Defendant, and KAREN de KLEINMAN, Defendant-Appellant.	Index No. 8147/86 MOVING AFFIDAVIT

KAREN de KLEINMAN,

Counterclaim Plaintiff-Appellant,

- against -

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,

Counter-Claim Defendants-Respondent.

STATE OF NEW)
) ss:
COUNTY OF NEW YORK)

KAREN de KLEINMAN being duly sworn, deposes and says:

I am the Appellant, a licensed real estate broker in the State of New York, appearing pro se, and respectfully submit the within affidavit in support of my application to reargue the denial of my request for this Court to permit an extension and enlargement of my time to

file and perfect my Appeal from the Order and Judgment, dated November 12, 1987, rendered by Mr. Justice Wilk in the Supreme Court, New York County, previously appealed to the Appellate Division of the Supreme Court, 1st Department.

In arriving at its decision denying my application, this Court overlooked several vital and cogent propositions of law, as well as undenied facts, which should form the basis for a review of the aforesaid Order made by Judge Wilk in the Supreme Court, granting summary judgment in favor of respondents. I respectfully submit that my reply affidavit, previously interposed in the within Court in support of my request for leave to appeal herein, to a great extent, reflects many principles of law and undisputed factual material, overlooked by this Court. I annex hereto

and make a part hereof, a copy of my reply affidavit.

While I do not desire to burden this Court with a repetition of those arguments previously discussed in my moving papers, I do desire to call the Court's attention to several relevant and meritorious points of law, as well as decisive factual material which entitled me to, at least, one review of the unfair and erroneous decision made by Judge Wilk.

Essentially, this case involves controversies which are most prevalent today, in connection with the rather recently developed concept of condominium ownership. Newspapers, magazines, professional journals, etc., reflect in their columns, a growing and controversial struggle, friction and abuse, between governing boards in their fiduciary capacities and the condominium

unit owners they serve. These problems affect the lives of almost all communities throughout New York State. Unresolved issues concerning the rights and obligations of unit owners and their respective boards of managers, create daily tension, arguments, confusion, frustration, ill feeling and eventually permanent divisions amongst neighbors, friends and fellow unit owners. Due to the lack of any definitive legislative code or basic body of laws governing condominium issues, there is a prevalence of chaos, misunderstanding, disrespect and abuses of normal mores and of the law in our community.

The subject case is no exception. As indicated in my previous papers, I have struggled through great difficulty and hardships, emotional stress and strain, in addition to an enormous loss and expenditure of money, simply in my

efforts to obtain fair play and justice. The within controversy can be summed up in one sentence. A seller (AI International Corp.) requested the Board of Managers to issue a routine document, i.e., "the Waiver of its right of 1st refusal to purchase the subject unit" and in this instance, wherein I was the prospective purchaser, the request was capriciously and maliciously denied. Significantly, I owned at that time, three other units in the same condominium building, all of which were in good standing. Nevertheless, in retaliation of my bona fide efforts to organize fellow condominium unit owners in the building in an effort to enforce and protect our rights, to exercise the right to free assembly and to express grievances in an attempt to improve the living and administrative conditions in the building, to enforce our rights to

petition the board, to call special meetings, to alert public officials to dangerous and reckless violations of law which endangered the lives and property of all building residents, etc., the Board of Managers repeatedly, over a 5 month period, refused to issue this routine "waiver", never before, in the history of the building's existence, denied. The motives for the Board's punitive and discriminatory actions were purely retaliatory against me, based solely on my exercise of my Constitutional rights.

Clearly the unlawful procedure of the Board, deprived me of many basic and fundamental Constitutional rights, i.e., the rights of free speech and assembly, the right to petition, to redress grievances under the First Amendment of the U.S. Constitution, which is made applicable to the states, through the

Fourteenth Amendment.

While many courts in our states have recognized and enforced these basic rights, obviously in this case, the lower courts have failed to protect my Constitutional rights. SEE Mobil Oil Corp. vs. Rubenfeld 357 N.Y.S. 2d 589; Markese vs. Cooper 333 N.Y.S. 2d 63. It is therefore respectfully submitted that these Constitutional rights involve fundamental principles of law, and are also of great public interest, affecting a substantial number of the citizens in our state.

Judge Wilk's decision failed to consider these abuses and deprivation of my Constitutional rights; indeed, he makes no mention of them whatsoever, in his decision. As a matter of law, his decision constituted an alleged judicial enforcement of **private discrimination** which is strictly prohibited under the

Fourteenth Amendment of the U.S. Constitution.

This Court's procedural order rendered against me is actually a final determination of my Constitutional rights. I have been denied the right to appeal solely because my previously incompetent attorneys failed to advise me of the "nine month" limitation rule in the lower court, nor did they ever advise me of the provision for the extension and enlargement of time in which to perfect my appeal, despite the fact that they were adequately compensated for their services. I have therefore been denied counsel and adequate representation, similar to a situation as if my attorney had died, and therefore I was abandoned and completely in the dark, as to my time limitations to perfect the subject appeal. My former attorneys are guilty of malpractice and at an appropriate time

and forum, I intend to commence an action against them for professional inadequacies. Again I must mention that I have incurred in excess of $150,000 for legal fees in resisting the condominium Board's capriciousness and unreasonableness, and have paid, and/or accrued in excess of $500,000 (five hundred thousand) in mortgage interest payments, real estate taxes and monthly condominium charges, in connection with the subject unit, which I was compelled to purchase in November, 1985, despite the Board's adamant retaliatory and unreasonable refusal to issue its routine "waiver". Furthermore, I have never been permitted by the Board, to reside in the subject premises. I am respectfully asking for equitable intervention by this Court, to prevent a grave injustice to me and many other unit owners, statewide, in similar situations.

The concept of finality, as the basis for denying my request, relating to the right to appeal, has no application where basic Constitutional rights are being flagrantly violated and abused, as here. In light of my lack of proper representation by competent counsel and the violation of my Constitutional rights, as described herein above, the lower court abused its discretion in refusing to permit me to perfect my appeal.

I respectfully briefly refer this Court to several violations of my Constitutional rights which have been discussed in depth in my previous papers. These include the Board's:

1) refusal to provide me with a mailing list of fellow unit owners in order to freely communicate and discuss the vexing problems affecting the

welfare of all unit owners;

2) refusal to call a Special Meeting of unit owners to remove the entire board, as called for in the duly signed and delivered petition;

3) refusal to permit the inspection of the books and records of the condominium;

4) refusal to discuss and/or address the contractual agreements and arrangements in connection with our Health Club facility, internal operations, managing agent, repairs, etc.;

5) neglect to timely supply the annual Financial Statement of the condominium;

6) refusal and/or neglect to disclose information in connection with litigation;

7) failure to distribute funds

belonging to unit owners, as a result of litigation against the Sponsor of the condominium;

8) refusal to properly conduct Annual Meetings in compliance with the By-laws and state statutes;

9) refusal to hold elections of the Board, as provided by the By-laws;

10) failure to comply with the fire laws of the City of New York.

The growing problems of the confrontations between Board members against unit owners requires the understanding and immediate attention of the Court. In the interest of justice, I pray that my Constitutional rights be restored and that I be permitted to continue on with the appellate process, which until now, has been denied me in all courts, based on erroneous

interpretation of basic Constitutional rights.

WHEREFORE, I respectfully ask that upon reargument, that leave to appeal be granted and that I be enabled to perfect my Appeal.

KAREN de KLEINMAN
Defendant-Appellant, pro se
641 Fifth Avenue
New York, New York 10022
(212) 308-2058

Sworn to, before me,
this 4th day of August 1989.

Public Notary

SUPREME COURT: NEW YORK COUNTY
INDIVIDUAL ASSIGNMENT PART 6
----------x

KAREN de KLEINMAN,

Plaintiff,

Index No.

10516/86

- against -

THE RESIDENTIAL BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,

Defendants.

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ELLIOTT WILK, J.[1]:

Plaintiff moves pursuant to CPLR 3212 for summary judgment.

This is one of three actions currently pending between the Board of Managers of Olympic Tower and Karen de Kleinman. In this action, plaintiff seeks a declaratory judgment setting aside the election of Board members at

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[1]I acknowledge the assistance of Tina Minauskas in the drafting of this opinion.

the 1985 annual meeting, and an order permitting plaintiff to examine the books and records of the Condominium and directing defendants to provide her with a copy of the mailing list of all unit owners.

Plaintiff's challenge to the 1985 election is untimely. Plaintiff did not commence this action until May 8, 1986, more than 15 months after she had notice of a resolution prohibiting her participation in the 1985 election and approximately a year after the challenged election took place.

Because setting aside the 1985 election would substantially prejudice defendants by calling into question the Board's decisions up to the present, and because plaintiff was allowed to participate in the 1986 and 1987 elections, I find that the relief sought is barred by laches and equitable

estoppel.

That branch of plaintiff's motion for summary judgment seeking a mailing list of unit owners is granted. Defendants' contention that the list is confidential is undercut by their attorney's letter of June 3, 1986, which states that "the ownership of each unit is a matter of public record".

Plaintiff argues persuasively that the standard which governs a shareholder's right to discovery and inspection of corporate books and records should also govern a condominium unit owner's right to inspect the condominium's books and records. The papers indicate that plaintiff is acting in "good faith" and that "inspection is sought for a valid purpose". RDR Associates, Inc. v. Media Corporation of America, 63 AD2d 888, 889 (1st Dept. 1978). Additionally, the condominium's

by-laws provide: "[e]ach Unit Owner... shall be permitted to inspect the books of account of the Condominium... ." Article VII, Section 3.

Accordingly, that branch of plaintiffs' motion which seeks an order permitting her to inspect the condominium's books and records is also granted.

Settle Order.

DATED: Sept. 15, 1989

J.S.C.

At an IAS Part 6 of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse, 60 Centre Street, New York, New York on the 12 day of November, 1987.

PRESENT:

HON. ELLIOTT WILK
JUSTICE

KAREN de KLEINMAN,

Plaintiff,

- against -

THE BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM, DONALD KREINDLER, T. VINCENT LEARSON, JOHN L. GRANT, DOROTHY CRAIG and IRVING LEVITT,

Defendants.

ORDER AND JUDGMENT

Index No. 10516/86

Plaintiff having moved for summary judgment and defendants having opposed said motion;

NOW, upon reading and filing the

Notice of Motion dated July 18, 1986, the Affidavit of Karen de Kleinman, sworn to on July 17, 1986, together with the exhibits annexed thereto, in support of plaintiff's motion; the Affidavit of John L. Grant, sworn to on September 30, 1986, together with the exhibits annexed thereto, in opposition to plaintiff's motion; and the Affidavit of Karen de Kleinman, sworn to on October 15, 1986, together with the exhibits annexed thereto in reply thereto and in further support of plaintiff's motion; and the matter having come to be heard before this Court; and Phillips, Nizer, Benjamin, Krim & Ballon having appeared for Plaintiff, and Kurzman Karelsen & Frank and Riker, Danzig, Scherer, Hyland & Perretti having appeared for defendants; and due deliberation having been had thereon; and this Court having rendered a memorandum decision dated

September 15, 1987,

NOW, on motion of Kurzman Karelsen & Frank, co-counsel for defendant it is

ORDERED AND ADJUDGED that plaintiff's motion for summary judgment is granted to the extent that plaintiff is granted summary judgment on her second cause of action, and defendants are directed to furnish plaintiff with a current mailing list of the owners of Olympic Tower within 5 days after service of a copy of this Order and Judgment with Notice of Entry upon defendants' attorneys; and it is further

ORDERED, that plaintiff's first cause of action is hereby dismissed.

_____

J.S.C.

SUPREME COURT: NEW YORK COUNTY
INDIVIDUAL ASSIGNMENT PART 6

----------x

KAREN de KLEINMAN,

Plaintiff,

Index No.

7081/86

- against -

THE BOARD OF MANAGERS OF
OLYMPIC TOWER CONDOMINIUM,

Defendant.

----------x

ELLIOTT WILK, J.[2]:

Plaintiff is the owner of several apartment units at Olympic Tower, a condominium located on Fifth Avenue and 51st Street.

On September 13, 1984, defendant, the Board of Managers of Olympic Tower Condominium, passed a resolution providing for certain procedures to be followed in nominations for election to the Board. This resolution stated that

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[2]I acknowledge the assistance of Tina Minauskas in the drafting of this opinion.

unit owners with a conflict of interest with the condominium are ineligible for election to the Board.

The Board included in the class of those with a conflict of interest persons associated with real estate brokerage firms representing persons buying, selling or leasing apartments in the building. Pursuant to this 1984 resolution, plaintiff was found to be ineligible for election to the Board of Managers.

Plaintiff, contending that a formal amendment to the by-laws is required to alter qualifications for Board membership, seeks a declaration that the 1984 nominating procedure resolution is invalid. Defendant contends that it acted within its authority in promulgating the resolution and seeks a declaration that the resolution is valid.

After plaintiff commenced this

litigation, the Board permitted her to run in the 1986 and 1987 elections, although it contends that it was under no legal compulsion to do so. The Board contends that because it has permitted plaintiff to run for election, her complaint no longer presents a justiciable controversy. I disagree. The Board has not rescinded the 1984 nominating procedure resolution. Plaintiff's ability to run for election to the Board in the future should not depend on the magnanimity of the Board. Additionally, it appears that, in the absence of a judicial determination, the 1984 resolution will spark annual litigation. See Carr v. New York State Board of Elections, 40 NY2d 556, 559 (1976).

I am similarly unpersuaded by defendant's argument that because it has the power to make decisions regarding the

Condominium's management, no amendment to the by-laws is required to alter the qualifications for board membership.

The Condominium Act (Real Property Law [RPL] § 339-d through § 339-ii) requires the operation of condominiums to be "governed by by-laws". RPL § 339-u. The by-laws of a condominium must provide for "[t]he nomination and election of a board of managers... ." RPL § 339-v(1)(a).

Article II, Section 1 of Olympic Tower's by-laws provides that "[e]xcept for Managers elected by Sponsor, all other Managers shall be Unit Owners... ." The by-laws contain no further restriction on board membership.

Article XII provides that the by-laws can only be amended or modified by a vote of 2/3rds of all the unit owners at a meeting of unit owners called for that purpose.

However burdensome or unwieldy the amendment procedure may be, it cannot be ignored for even the most pragmatic of reasons.

The by-laws and the Condominium Act compel a declaration that any change, addition, or modification of the qualifications for election to the Board of Managers requires an amendment to the by-laws.

Accordingly, plaintiff's motion for summary judgment is granted to the extent that the 1984 nominating procedure resolution is declared null and void.

Defendant's cross-motion for summary judgment dismissing the complaint and for the relief requested in the counterclaim is denied.

Settle Order.

DATED: 9/15/87

J.S.C.

At an IAS Part 6 of the Supreme Court of the State of New York, held in and for the County of New York at the Courthouse, 60 Centre Street, New York, New York on the 12 day of November, 1987.

PRESENT:

HON. ELLIOTT WILK
JUSTICE

KAREN de KLEINMAN,

Plaintiff,

- against -

THE BOARD OF MANAGERS OF OLYMPIC TOWER CONDOMINIUM,

Defendant.

ORDER AND JUDGMENT

Index No. 7081/86

Plaintiff having moved for a preliminary injunction and thereafter for summary judgment, and defendant having opposed said motions and cross-moved for summary judgment dismissing the complaint

and for the relief requested in the counter-claim;

NOW, upon reading and filing the Order to Show Cause dated April 1, 1986, and the Affidavit of Karen de Kleinman, sworn to on March 31, 1986, together with the exhibits annexed thereto, in support of plaintiff's motion for a preliminary injunction; the Affidavit of T. Vincent Learson, sworn to on April 9, 1986, together with the exhibits annexed thereto, in opposition to plaintiff's motion; the Affidavit of Karen de Kleinman, sworn to on April 9, 1986 in reply thereto and in further support to plaintiff's motion; the Surreply Affidavit of T. Vincent Learson, sworn to on April 25, 1986 together with the exhibits annexed thereto; the Notice of Motion dated April 28, 1986 and the Supplemental Affirmation of Martin Stein, Esq. dated April 28, 1986 in support of

plaintiff's motion for summary judgment; the Notice of Cross-Motion dated May 23, 1986 [sic] and the Affidavit of Donald L. Kreindler, sworn to on May 28, 1986, together with the exhibits annexed thereto, in opposition to plaintiff's motion for summary judgment; the Supplemental Affirmation of Martin Stein, Esq., dated June 2, 1986, together with the exhibit annexed thereto and the Further Affirmation of Martin Stein, Esq. dated June 11, 1986, both in further support of plaintiff's motion for summary judgment and in opposition to defendant's Cross-motion for summary judgment; the Order to Show Cause dated March 9, 1987 and the Affirmation of Martin Stein, Esq. dated March 6, 1987, together with the exhibits annexed thereto, in support of plaintiff's motion for additional preliminary injunctive relief; and the Affidavit of John L. Grant, sworn to on

March 30, 1987, together with the exhibits annexed thereto, in opposition thereto; and the matter having come to be heard before this court, and Phillips, Nizer, Benjamin, Krim & Ballon and Certilman Haft Lebow Balin Buckley & Kremer having appeared for plaintiff, and Kurzman Karelsen & Frank and Riker, Danzig, Scherer, Hyland & Perretti having appeared for defendant; and due deliberation having been had thereon; and this Court having rendered a memorandum decision dated September 15, 1987;

NOW, on motion of Kurzman Karelsen & Frank, co-counsel for defendant, it is

ORDERED AND ADJUDGED that plaintiff's motion for summary judgment is granted to the extent that subparagraph (1) (B) of the Nominating Procedures adopted by the defendant Board of Managers of the Olympic Tower Condominium is hereby declared to be null

and void; and it is further

ORDERED that defendant's cross-motion for summary judgment dismissing the complaint and for the relief requested in the counter-claim is denied.

Enter: _____
J.S.C.

APPENDIX B

Petitioner's "BRANDEIS BRIEF"

PAGE

I. PENDING LEGISLATION
NEW YORK STATE LEGISLATION

ASSEMBLY BILL #3518/ 18
SENATE BILL #4743

"A COOPERATIVE AND CONDOMINIUM
UNIT OWNER'S BILL OF RIGHTS"
(Complete Text) App.B.1-13

* * *

II. OUR TOWN - New York City Newspaper focusing on community issues. 18

1. 5/31/87 - Editorial, "Curbing Coop Corruption" B.14
2. 4/17/88 - "Bill to give greater power to co-op and condo owners." B.17

* * *

III. COMMUNITY ASSOCIATIONS INSTITUTE (CAI)"FACTBOOK"
Statistics and background information regarding all forms of common-interest home ownership which includes condominiums, homeowners associations and housing cooperatives.

a) Facts-at-a-Glance B.24

b) What is a Community Association? B.29

c) Different Types of Ownership B.29

d) Map showing geographic growth locations of U.S. community associations B.34-38

* * *

IV. CONDOMINIUMS AND COOPERATIVES B.39
(2nd Edition), by Clurman, Jackson and Hebard

(Mistaken beliefs concerning restrictions on the transfer of condominium units,and the "right of first refusal".)

STATE OF NEW YORK

4743

1989-1990 Regular Sessions

IN SENATE

April 12, 1989

Introduced by Sen. GOODMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing and Community Development

An ACT to amend the general business law and the real property law, in relation to enactment of a residential cooperative and condominium owner's bill of rights

3518

1989-1990 Regular Sessions

IN ASSEMBLY

February 15, 1989

Introduced by M. of A. GRANNIS -- Multi-Sponsored by -- M. of A. BARBARO, BECKER, BRENNAN, BRODSKY, CLARK, COLEMAN, CONNERS, CROWLEY, DEARIE, DIAZ, DiNAPOLI, EVE, FRISA, GOTTFRIED, GREENE, HILLMAN, HINCHEY, JACOBS, JENKINS, KAUFMAN, LAFAYETTE, LASHER, MURTAUGH, NADLER, NOLAN, PASSANNANTE, PRESCOTT, SANDERS, STRANIERE, TALLON, YEVOLI, YOUNG -- read once and referred to the Committee on Housing

An ACT to amend the general business law and the real property law, in relation to enactment of a residential cooperative and condominium owner's bill of rights

S. 4743/A. 3518

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 352-eeeee to read as follows:

§ 352-eeeee. Residential cooperative and condominium owner's bill of rights. The organizational and operating documents of every residential cooperative housing corporation and every residential condominium association established or operating pursuant to the laws of the state shall guarantee the following to each shareholder or unit owner:

1. That any application in connection with matters which require approval of the board of directors or board of managers be processed in a reasonably expeditious manner on a non-

discriminatory basis pursuant to uniform procedures and timetables adopted in writing and that any such approval shall not be unreasonably withheld. A board's refusal to allow a shareholder or unit owner to sublet an apartment pursuant to a uniform policy which is reasonably designed to prohibit or limit subletting by non-resident shareholders or unit owners shall not be deemed to be an unreasonable withholding of consent pursuant to this subdivision. The board's decision shall be in writing and where approval is denied the decision shall set forth the reasons for denial. The foregoing provisions of this subdivision shall not prohibit the enforcement of uniform reasonable policies related to the health, safety and welfare of the residents and the safe and prudent operation of the premises.

S. 4743/A. 3518

2. That elections for members of the board of directors or the board of managers be held by secret ballot, unless waived by a unanimous vote of the shareholders present in person or by proxy at the election meeting, or in the case of an uncontested election, and that a tally of the votes received by each candidate in an election for the board of managers or board of directors be posted within one day following the availability of such information in a prominent place accessible to all tenants in each building affected by the vote.

3. That the board of directors or board of managers act in a timely fashion to fill any vacancies which occur on such boards.

4. That any member of a board of directors or board of managers who is elected while a shareholder or unit owner

in the cooperative corporation or condominium association, who is offering his or her apartment or the shares allocated thereto for sale, and who, subsequent to such sale shall no longer be a shareholder or unit owner in such corporation or association, shall resign from such board.

5. That complete and accurate financial statements and any other statements ordinarily provided to shareholders or unit owners be provided in a timely fashion pursuant to established timetables at least once annually. For the purposes of this subdivision "financial statements" shall include the balance sheets and statements of income and changes in financial position for each of the three most current fiscal years. Attached to said financial statements shall be a statement

which discloses (i) any known interest, direct or indirect, beneficial or otherwise, which any director, association member, officer, employee, agent, shareholder or condominium owner or relative of any such person has in any supplier of services or material to said cooperative or condominium and (ii) any consideration, financial or otherwise, which said director, association member, officer, employee, agent, shareholder or condominium owner or relative of any such person has received or is receiving from such supplier.

6. That the following documents be made available for inspection or copying by shareholders or unit owners at reasonable time on no more than ten days written notice to the board of directors or board of managers:

(i) approved minutes of board of

directors or board of managers meetings, provided that such boards shall have fifteen days from the dates of the meetings at which minutes are approved to prepare such minutes;

(ii) repair and maintenance bills and service contracts. All such bills and contracts shall fully describe the repairs or services performed and apportion the total cost for specific repairs or services;

(iii) banking account and financial investment statements;

(iv) vendor lists and competitive bidding submissions;

(v) reports of accountants, consultants and experts retained or hired to perform services for or on behalf of the corporation or association including financial statements as defined in subdivision five of this section

provided, however, that such reports may be withheld where the report concerns or may concern litigation, where the report was prepared in connection with the litigation and where a majority of the members of the board have voted to withhold such information. Where the matter concerns alleged conflict of interest involving board members the report may be withheld only upon a vote of the majority of disinterested board members. If all board members are interested parties the report may not be withheld; and

(vi) reports by municipal and/or county inspectors concerning compliance with health, building and housing codes and regulations.

7. That in addition to any other notice required by the cooperative corporation's or condominium

association's organizational or operating documents, notice of all board and shareholders or unit owner meetings be posted in conspicuous common areas at least ten days prior to such meetings.

8. That the board of directors or board of managers shall not impose special assessments, or enter into contracts for extraordinary expenses beyond customary operating or maintenance costs, without approval by a vote of the shareholders or unit owners. A vote of the shareholders or unit owners may be waived by the board in the case of (i) an emergency evidenced by an approved resolution of the board, (ii) a required refinancing of an existing mortgage or (iii) where shareholders or unit owners have been notified of the proposed action in writing within a reasonable period of time prior to the proposed date of

implementation of the action and where such notice provides that the board may waive a vote unless at least a certain percent of the shareholders or unit owners demand in writing that the action be put to a vote. Such percentage may not exceed fifty percent.

9. That shareholders and unit owners be provided with written procedures for requesting a timely determination by the board of directors or board of managers of disputes concerning responsibility for repairs including resolution of disputes between or among shareholders or unit owners, disputes between shareholders and the cooperative corporation or between unit owners and the condominium association.

§ 2. Subdivision 1 of section 339-v of the real property law is amended by adding a new paragraph (k) to read as

follows:

(k) That a member of the board of managers who is elected to fill a vacancy, unless elected by a general vote of the unit owners, shall hold office until the next meeting of unit owners at which the election of a member or members of the board of managers is in the regular order of business, and until his or her successor has been elected and qualified.

§ 3. Within 6 months of the effective date of this act the attorney general shall promulgate a handbook summarizing the rights of shareholders and unit owners vis-a-vis cooperative corporations and condominium associations and the procedures and processes available to shareholders and unit owners to enforce such rights.

§ 4. This act shall take effect

immediately provided however that as to residential cooperative housing corporations and residential condominium associations existing and operating as such on the effective date of this act the boards of directors of such corporations and the boards of managers of such associations shall within 1 year of the effective date of this act take all steps necessary to amend the appropriate organizational and operating documents of such corporations or associations to implement the provisions of this act.

OUR TOWN

"The newspaper that cares...

about you and your community"

Vol. 18 No. 5 CIRCULATION EXCEEDS 131,000

May 31, 1987

Editorials

CURBING COOP CORRUPTION

The petty tyrants who abound on the boards of directors of cooperative buildings are frightened. Their arrogant exercise of power over tenant-shareholders is being threatened by the Coop and Condo Bill of Rights passed by the New York State Assembly under the sponsorship of East Side Assemblyman "Pete" Grannis. A companion bill, S-2610, is being sponsored by Senator Roy Goodman.

A legislative alert issued by the Council of New York Cooperatives, a special-interest lobbying group for coop boards, urges its members to lobby

against the bill. Since the bill would require coop board members to disclose personal interests that they or their relatives might have with contractors and vendors that deal with their coop, the bill is a threat to those who would illicitly profit from their positions on a board of directors.

We believe that this provision alone merits the passage of the bill. It would eliminate the unjust and illegal enrichment of board members or their relatives as a result of undisclosed insider interests that the members had with contractors and vendors dealing with the coop.

The cooperative board council is organizing an intensive letter-writing campaign against the Bill of Rights for coop and condo residents. It is therefore urgent that residents write to the members of the Senate Committee on

Housing and Community Development in support of S-2610. Passage of the proposed legislation will eliminate much of the corruption and "under the table" payoffs that occur in the letting of contracts for services and construction by coop boards.

The Chairman of the Senate Committee is Senator John B. Daly. New York City members of the Committee are Senators Abraham Bernstein, Andrew Jenkins, Martin J. Knorr, Martin Markowitz, Olga Mendez, Frank Padavan, Israel Ruiz, Jr. and Guy Velella. You should address your correspondence to them at: New York State Senate, Albany, New York 12247. We also urge that you write to Senator Goodman to urge him to keep battling for this anti-corruption measure.

OUR TOWN

"The newspaper that cares...
about you and your community"

Vol. 18 No. 51 April 17, 1988

BILL TO GIVE GREATER POWER TO CO-OP AND CONDO OWNERS

By Greg Botvinik

A bill currently before the New York State Legislature is intended to provide owners/shareholders of condos and co-ops with greater powers in their dealings with boards of directors. Termed officially by its sponsors as a "residential cooperative and condominium owner's bill of rights," the bill (#1935) is being sponsored by Assemblymember "Pete" Grannis (Chairman of the Housing Committee) and by State Senator Roy Goodman.

The proposed legislation passed in the Assembly last year, but it was rejected in the Senate. It will be

coming up for another vote in both houses within the next few weeks.

fairness

According to Grannis, "The bill's intent is to make fairness part of the business of running co-ops and condominiums. Fairness means putting the coop boards procedures and policies down in writing for all to see; keeping shareholders informed about what their board is doing and how the board's decisions will affect their homes; giving all shareholders access to the information they need to be active participants in the corporation or association; letting shareholders know about upcoming meetings and votes so they can be prepared as to their opinions and assistance."

One of the highlights of the bill is a mandate for boards to make decisions requiring their approval is a "reasonably

expeditious manner on a non-discriminatory basis." Furthermore, all decisions would have to be in writing and whenever board approval was denied, the board's statement would have to include the reasons for denial.

Boards would have to fill vacancies on the board in a timely manner. Any resident board members who sold their shares or units would have to resign from the board.

conflicts of interest

Complete and accurate financial statements would have to be issued in a "timely" manner at least annually. They would have to include conflict of interest statements disclosing any interest held and any compensation received by any shareholder, owner, or director from any company supplying goods or services to the co-op/condo.

Key documents would have to be made

available for inspection or copying within ten days of any written request. Such information would include minutes of board meetings, bank statements, financial investment statements, competitive bid statements, accounting and consulting reports, and any code inspection reports.

Boards would be limited in their ability to impose special assessments or to enter into contracts for extraordinary expenses without a referendum by the owners/shareholders.

Persons elected by the board to fill any vacancies would be allowed to hold office only until the next regularly scheduled meeting of owners at which board members would normally be elected.

current problems

Co-op and condo boards are presently governed by general business laws, business corporation laws, and the

individual by-laws of each corporation or association. Supporters of the bill say that it will help prevent the types of abuses that have been committed under the existing laws. For example, Fran Lee, a West Side consumer rights advocate, maintains that in her years of experience as a co-op shareholder and board member, she has often witnessed situations in which boards have acted in a self-serving manner and have withheld critical information from their fellow shareholders.

Grannis reports that his office receives hundreds of complaints each year from co-op shareholders about their boards. These complaints concern a range of issues from denials of information requests to withholding explanations of important board decisions, including the reasons why prospective purchasers have been rejected. By mandating explanations

for board denials of requests, the bill would eliminate at least the most blatant incidents of rejection of applicants on the basis of race, sex, age, marital status, occupation, etc.

opponents of bill

Critics of the bill have no qualms with its intent. However, attorney Stephen Raphael and Mary Ann Rothman, Executive Director of the Council of New York Cooperatives, report that they are concerned that some of the bill's terms are too vague. They predict that differences of its interpretation would undoubtedly lead to a drastic increase in the amount of costly and time-consuming litigation between owners/shareholders and boards.

When asked about this criticism Grannis stated, "I fail to see how such fairness will invite litigation. Litigation has occurred in the past,

because there has been nothing to govern what are often the arbitrary and capricious decisions of the board. The very intent of the bill is to put fairness into law so that past and present litigation can be avoided. Instead of unnecessary disputes between a board and the shareholders, there will be a law on the books that settles the matter."

Rothman believes that the bill is essentially superfluous because it merely reiterates many existing legal requirements. In several cases where prospective purchasers suspected that their applications were rejected because of racial or sexual discrimination, they had those decisions reversed after filing complaints and pursuing investigations by the City's Human Rights Commission.

COMMUNITY ASSOCIATIONS INSTITUTE

1423 Powhatan Street, Suite 7

Alexandria, Virginia 22314

(703) 548-8600

Community Associations

Facts-At-A-Glance 1988

. Number of Community Associations (CA): 130,000

. Types of CAs:

Condominiums: 54 percent

Homeowners Associations (HOA): 41 percent

Housing Cooperatives: 5 percent

. Number of CA Units: 12,350,000

. Average Number of Units Per CA: 95

. Average Number of Persons Per CA Unit: 2.4

. Number of Residents in the United States Who Live in CAs: 29,640,000 (or 12.1 percent of U.S. residents)

CA Growth

1962: 500 CAs

1975: 20,000 CAs

1980: 55,000 CAs

1988: 130,000 CAs

*2000: 225,000 CAs * Projected Growth

. Characteristics of CAs

Architectural Types:

(Distribution)

Townhouses: 39 percent

Mixed Architectural Types: 20 percent

2-4 Story Multifamily Houses:

17 percent

Single-Family Detached: 15 percent

High-Rise (5+ Stories): 9 percent

(Emphasis and underscoring added by petitioner.)

COMMUNITY ASSOCIATIONS FACTBOOK

Facts About Community Associations

- One out of every eight Americans (29.4 million people) lives in common-interest communities governed by community associations
- In 1962 there were 500 community associations in the United States; today there are 130,000. 54 percent are condominiums, 5 percent are housing cooperatives, and 41 percent are homeowners associations
- More than half of community associations are townhouse and garden (low-rise) developments
- Community associations spent over $12.5 billion last year and maintained another $5 billion in reserves - a buying power greater than the total annual budget for the State of Illinois

- In the 50 largest metropolitan areas, community association developments account for at least 50 percent of the market share of new home sales
- 27 percent of all multifamily housing starts last year were condominiums- up 4 percent from 1986
- In 1987, 16 percent of all first-time homebuyers bought condominiums
- 48 percent of all condominium buyers are first-time buyers
- Homes in community associations are available in all price ranges, however, the median cost of a condominium ($83,800) is 12 to 15 percent below the cost of a new single-family home
- Condominiums appreciated at a faster rate than single-family homes last year
- 95 percent of today's common-interest community homebuyers are satisfied

with their purchase

- The problems most often cited in community associations involve pets, children, parking, and noise. These same problems are cited in surveys of community association homeowners in Japan and Australia
- The U.S. Department of Labor identifies community association management as a growth profession through the year 2000

What Is a Community Association?

Community Association (CA) is a generic term used to describe all forms of common-interest homeownership. The purchaser of a home in a community association development enjoys unique services and amenities provided by the owners association.

There are three types of community associations. Each type combines individual homeownership with shared use or ownership of common property, and each operates according to similar principles of self-governance. However, the different types of CAs have distinct characteristics.

The Different Types of Community Association Ownership

Condominiums - The homeowner owns the interior of the individual residence while the exterior is owned "in common" with the other owners. The unit owner

actually owns a partial interest in the common property in addition to the residence. The association is responsible for maintaining the property and delivering common services, but does not own the common property.

Homeowners Associations (HOA) - The homeowner owns the lot, including the interior and exterior of the individual home, while the association owns and maintains the common property.

Housing Cooperatives - Private corporations in which members own shares in the corporation that owns the buildings and grounds. Shareholders lease their units from the corporation. The housing cooperative maintains all common property and pays a common mortgage.

The First Community Associations

Some people contend that condominiums evolved directly from

prototypes built during the 6th century B.C. in Rome. More recent research indicates that the condominium form of ownership had its roots in Medieval Germany and was a logical solution for meeting the homeownership desires of an emerging middle class of merchants.

The first HOA in the United States was Louisburg Square, a townhouse association built in 1828 in Boston Massachusetts. The first housing cooperative was established in New York City in 1918. The nation's first condominium, The Greystoke, was built in Salt Lake City, Utah, in 1962. Today, there are over 130,000 community associations of all types.

Community Associations Come in All Shapes and Sizes

Community association developments come in a variety of architectural types, and range in size from the smallest

communities of just two units, to larger ones having thousands of units. The median size is 95 units, but 26 percent of association developments have less than 50 units and 25 percent have more than 250 units.

Community associations are present in any development without regard to architectural type - single-family, townhouse, low-, mid-, or high-rise. However, because homeownership in a HOA almost always includes the land under the unit, HOAs are typically found in single-family detached or townhouse attached developments. Condominiums and cooperatives are found with any architectural type, but are the only form that can be used where units are stacked, as in low-, mid-, or high-rise developments.

A pioneer community association and one that is among the best known planned

unit developments in the country is Reston, Virginia. Were Reston a city, it would rank in the top 500 in population; already, Reston is larger than 18,000 of the United States' cities and towns. Similarly, the Columbia Association in Maryland recently celebrated its 20th birthday. With a population of 68,000 and near in size to Charleston, South Carolina, Columbia would rank 311th among U.S. cities.

Community Associations by Percentage Distribution of Architectural Types

Townhouse/Townhome	39%
Mixed Use Types	20%
2-4 Story Multifamily	17%
Single-Family Detached	15%
High-Rise (5+ Stories)	9%
Total	100%

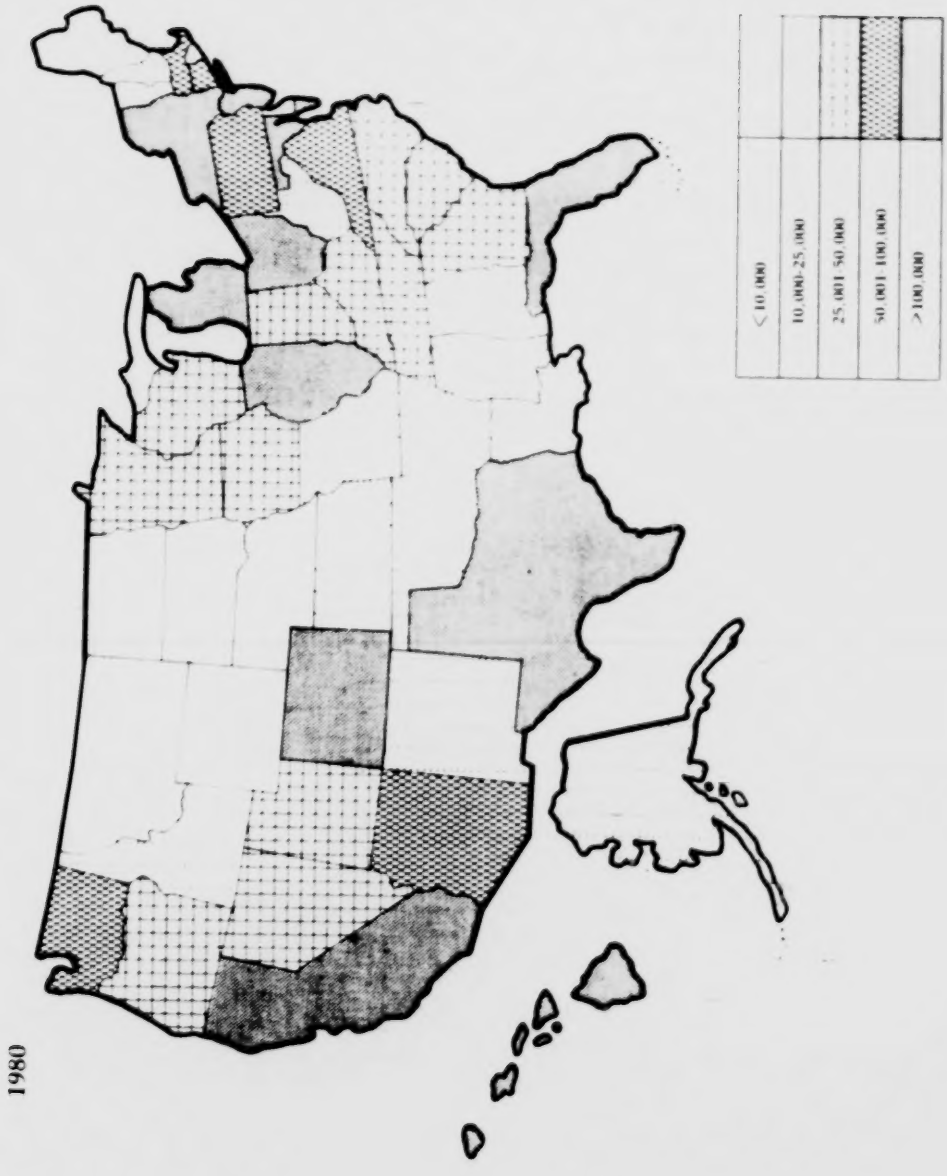
SOURCE: Community Associations Institute (CAI) and the Advisory Commission on Intergovernmental Relations (ACIR), 1988.

WHERE Are CAs Located?

1970

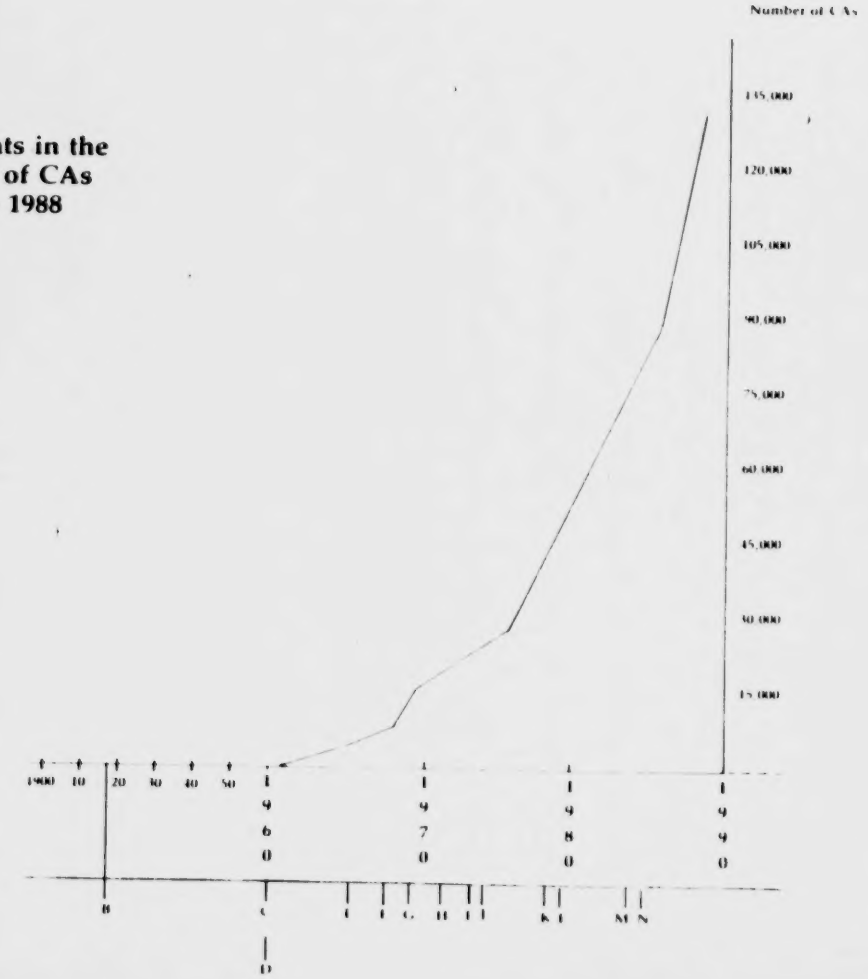
SOURCES: U.S. Bureau of the Census; Arthur D. Little, CAI

The geographic distribution of community associations in the United States has undergone marked changes since the CA's initial appearance on the housing front. Until recently the bulk of community associations were extremely localized, with 50 percent of all community association developments concentrated among three states-California, New York, and Florida-during the 1970s. By 1980, 80 percent of all CAs were distributed across 10 states. Today, the prevalence of community associations is apparent throughout urban and suburban America. It is expected that the 1990 Census will show an even greater abundance of CAs throughout the country.


1980
< 10 000
10 000- 25 000
25 001- 50 000
50 001- 100 000
> 100 000

Estimates for 1988 are that there are 11 and one-half million CA units in the United States and more than 130,000 community associations. Given current population trends and considering the economics of home-buying, CAI estimates that by the year 2000, there will be over 225,000 community association developments and in excess of 18.5 million units.

Key Events in the Growth of CAs 1829 - 1988



A	Louisburg Square, Boston, 1828. (First HOA.)
B	First coop, 1918.
C	The Greystoke, Salt Lake City, 1962. (First condominium.)
D	Federal Housing Administration (FHA) offers insurance for condo mortgages.
E	The pill hits the market, 1965.
F	50th state adopts Condo Act, 1967.
G	Equal Credit Opportunity Act (ECOA) passed.
H	CAI established, 1973.
I	Veterans Administration (VA) insures condo mortgages for Vets, 1974.
J	Fannie Mae (Federal National Mortgage Association) begins buying condo mortgages, 1975.
K	Condo conversion boom, 1978.
L	Uniform Condo Act, 1979.
M	Fannie Mae provides condo loans, 1984.
N	Tax Reform Act, 1986.

The following brief discussion of the "right of first refusal" is found on page 112 in a comprehensive volume entitled CONDOMINIUMS AND COOPERATIVES (2nd Edition) by Clurman, Jackson and Hebard.

"It is disturbing to find that in a large number of condominiums the residents hold mistaken beliefs concerning restrictions on the transfer of units. The usual error consists of believing that the approval of the board was required rather than that notice of the intended sale, subject to the right of first refusal or of buyer substitution must be given by the unit owner to the board before any sale could be made. ***"

"The trend of the case law is to construe provisions containing rights of first refusal very strictly, and community associations may be liable for heavy punitive damages if the right is

discriminatorily exercised. In fact, the task force of the secondary market agencies (VA, FHA, FNMA, and FHLMC) published a report in December of 1980, which said that the agencies will not involve themselves in any condominium project where the right of a unit owner to freely sell or rent his or her unit is subject to any right of first refusal or similar restriction."

(emphasis and underscore supplied)

APPENDIX C PAGE

CORPUS JURIS SECUNDUM App.C.1-8

VOLUME 16-A/CONSTITUTIONAL LAW

Section 506: Property Rights and Interests 4,5,C.1

Section 507: Nature and Extent 4,C.5

CORPUS JURIS SECUNDUM

Volume 16A/pgs. 606-612

"CONSTITUTIONAL LAW"

§ 506. Property Rights and Interests

The right of private property is a fundamental, sacred, natural, inherent, and inalienable right, which is protected by the federal and state constitutions.

Research Note

Property and rights therein protected under due process of law are discussed infra § 982 et seq.

Library References

Constitutional Law 87.

The right of private property is a fundamental, sacred, natural, inherent, and inalienable right, the protection of which is one of the most purposes of government. It is a common-law right, which existed before the adoption of the federal and state constitutions, and is

not now dependent on them for its existence. Property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, i.e., rules or understandings that secure benefits and that support claims of entitlement to those benefits. However, to insure their continuance, property interests are guaranteed by the federal and by the various state constitutions.

The constitutional provisions for the protection of property shall be liberally construed in favor of the right of property. Protection of the right to property is not dependent on the value or amount of property held. The right may not be submitted to vote, and depends on the outcome of no election. The right to enjoy property without unlawful deprivation is a personal right,

regardless of the property in question.

The right to private property and its incidents are embraced within the guaranty of liberty, but the right to own and enjoy property is no more sacred than personal liberty or human rights. A person has the right to be free from unauthorized actions of government officials which substantially impair his property interests, and constitutional protections against governmental intrusion are not dependent on ownership or possession but on a person's claim to privacy of his property or home.

Under constitutional provisions, no person can be deprived of his property except by his own consent or the law of the land, or except for very urgent reasons. Furthermore, the constitutional guaranties of property exclude arbitrary restrictions on property rights, and all statutes and ordinances which violate the

constitutional guaranties are null and void; an in some jurisdictions, the guaranty extends to individual interference as well as to legislative encroachment. However, a statute does not deprive a person of property unless it prevents him from doing an act which he desires to do or diminishes the enjoyment or profit which he would otherwise derive from his property. Moreover, without violating the guaranty of property, the legislature may make special provisions for the security of life and limb and leave property to the protection of the common law***.

§ 507. Nature and Extent

The constitutional right of private property embraces every species of property recognized by law with all rights incident thereto, and is not limited to the protection of tangible property, but extends to intangible property as well.

Research Note

The guaranty of property includes the liberty to contract, as discussed supra § 491, and, as considered supra § 494, comprehends, as well, the right to engage in any lawful trade, occupation, or business.

Library References

Constitutional Law 87.

The constitutional right of private property embraces every species of property recognized by law with all rights incident thereto, and is not

limited to the protection of tangible property, but extends to intangible property as well. As protected by the various constitutions, property is more than a mere thing which a person owns; indeed, "property," in the constitutional sense, is not the physical thing itself but is rather the group of rights which the owner of the thing has with respect to it. The term "property" is broad enough to offer protection to an objective expectancy of the continuance of an interest which has initially been conferred by the state, but whether a constitutional protection attaches depends upon the relative weights of the private interest affected and the governmental function involved, and not upon assignment of meaning to the word "property."

The guaranty embraces the right to acquire, possess, use, enjoy, protect,

improve, as by the erection or construction of a building, lease, and dispose of, or not dispose of, property. However, it has been held that the right to alienate one's property is not a fundamental right. One may devote his property to any legitimate use, provided he does not violate any provisions of the federal and state constitutions or violate any constitutional laws or regulations.

On the other hand, the constitutional guaranties do not secure to any man the right to acquire property in anything that is not the subject of private property by law, or the right of disposing of property that has not been duly acquired under the law of the land, nor does the guaranty extend to property to which the complaining party has no title. Furthermore, the state is not required to grant all the traditional

incidences of property rights where some degree of interest has been granted.

Various interests have been held to be property, or not to be property, protected under the constitutional right of private property.